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CUMULATIVE SUPPLEMENT

TO

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1972 ANNOTATED

Issued December 2020

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ENACTED THROUGH THE 2020 REGULAR SESSION
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Title 21

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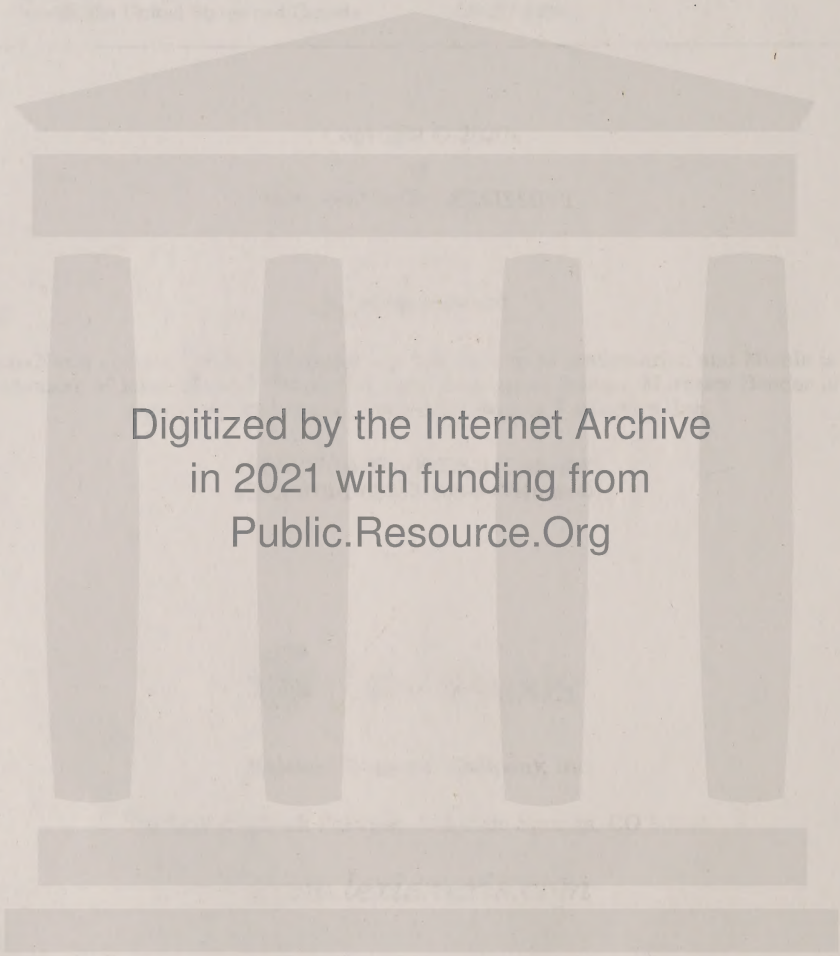
User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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PUBLISHER'S FOREWORD

Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 21. MUNICIPALITIES

CHAPTER 15. OFFICERS AND RECORDS

SEC.

21-15-41. Limitations period for serving in interim or hold-over capacity in certain appointed positions.

CHAPTER 27. PUBLIC UTILITIES AND TRANSPORTATION

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SPECIAL LOCAL IMPROVEMENT ASSESSMENT DISTRICTS

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21-33-553. Creation of special local improvement assessment districts under certain circumstances; procedure for establishment of districts.

21-33-555. Powers of homeowners' associations representing property in special local improvement assessment districts; dissolution of districts.

21-33-557. Use of proceeds of special assessments levied on real property located in districts.

21-33-559. Acceptance and expenditure of contributions from other sources.

21-33-561. Assessment of taxable property falling under more than one homeowners' association. from other sources.

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MUNICIPALITIES

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CHAPTER 1.

CLASSIFICATION, CREATION, ABOLITION, AND EXPANSION

Extension or Contraction of Corporate Boundaries. 21-1-27
Inclusion of State Institutional Facilities. 21-1-59

INCORPORATION

§ 21-1-21. Appeal.

JUDICIAL DECISIONS

2. Time limitations.

City's appeal of a decision denying annexation was timely where the 10-day time to file an appeal in Miss. Code Ann. §§ 21-1-21 and 21-1-37 was procedural, that procedural requirement conflicted with Miss. R. App. P. 1, 3, and 4, and the city had filed the appeal within 15 days of

the date the judgment was entered. Wood v. Warren, 193 So. 2d 123 (Miss. 1966), and Fisher v. Crowe, 289 So. 2d 921 (Miss. 1974), declaring that an aggrieved party had to appeal an annexation decree within 10 days were overruled. City of Petal v. Gulf South Pipeline Co., LP (In re Enlargement & Extension of the Mun. Boundaries of the City of Petal), — So. 3d —, 2020 Miss. LEXIS 319 (Miss. Sept. 10, 2020).

EXTENSION OR CONTRACTION OF CORPORATE BOUNDARIES

Sec.

21-1-27. Passing of ordinance [Subsections (2) and (3) repealed effective July 1, 2019].
21-1-33. Hearing on petition; decree.

§ 21-1-27. Passing of ordinance [Subsections (2) and (3) repealed effective July 1, 2019].

(1) The limits and boundaries of existing cities, towns and villages shall remain as now established until altered in the manner hereinafter provided. When any municipality shall desire to enlarge or contract the boundaries thereof by adding thereto adjacent unincorporated territory or excluding therefrom any part of the incorporated territory of such municipality, the governing authorities of such municipality shall pass an ordinance defining with certainty the territory proposed to be included in or excluded from the corporate limits, and also defining the entire boundary as changed. In the event the municipality desires to enlarge such boundaries, such ordinance shall in general terms describe the proposed improvements to be made in the annexed territory, the manner and extent of such improvements, and the approximate time within which such improvements are to be made; such ordinance shall also contain a statement of the municipal or public services which such municipality proposes to render in such annexed territory. In the event the municipality shall desire to contract its boundaries, such ordinance shall contain a statement of the reasons for such contraction and a statement showing whereby the public convenience and necessity would be served thereby.

(2) [Repealed].

(3) [Repealed].

HISTORY: Codes, 1892, § 2912a; 1906, § 3301; Hemingway's 1917, § 5797; 1930, § 2371; 1942, § 3374-10; Laws, 1902, ch. 103; Laws, 1910, ch. 230; Laws, 1950, ch. 491, § 10; Laws, 2016, ch. 443, § 1, eff from and after July 1, 2016.

Editor's Notes— Former subsections (2) and (3) were repealed by their own terms, effective July 1, 2019. Subsection (2) related to the ordinance certain municipalities needed to pass to enlarge the municipality's boundaries by adding adjacent unicoporated territory after January 1, 2016. Subsection (3) defined "census block."

Amendment Notes — The 2016 amendment added (2) and (3).

JUDICIAL DECISIONS

2. Annexation of territory.

Chancery court's approval of a town's annexation request was supported by the record because its findings for the potential-health-hazard factor were not unreasonable; large areas of the proposed annexation areas were without centralized sewer and used either septic tanks or some type of on-site wastewater-treatment facility, and when a power outage occurred, the sewage system did not operate. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

Chancery court's approval of a town's annexation request was supported by the record because the need for municipal services factor favored annexation; while annexation might not lower fire-insurance premiums, the proposed annexation area would still gain additional police and fire protection, as well as water and sewer services. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

Chancery court's approval of a town's annexation request was supported by the record because its determination that the natural-barriers factor favored annexation was reasonable; an urban planning consultant testified that no natural barriers existed to make the provision of services cost prohibitive to the proposed annexation area and that a river to the east of the town did not constitute a natural barrier because the town already was providing water and sewer across the river. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

Chancery court's approval of a town's annexation request was supported by the record because even supposing the town provided water that occasionally was insufficient, the town provided substantial and credible evidence that the residents of the proposed annexation area received benefits from the town without paying the corresponding taxes. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

Chancery court's approval of a town's annexation request was supported by the record because an urban planning consultant testified that the town was the county seat, that it consisted of only 1.6 square miles, that it had has never annexed before, and that the relocation of a highway bypass also favored annexation; the town was not required to produce a resident in favor of annexation. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

Chancery court's approval of a town's annexation request was supported by the record because the need-to-expand factor favored the town since it consisted of only 1.6 square miles, was the county seat had never annexed territory, and experienced spillover development; the chancery court's findings considered the town's need for land, the remaining vacant land within the municipality, spillover development, the town's need for developmental land, and the need to expand the town's tax base. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

Chancery court's approval of a town's annexation request was supported by the record because an urban planning consultant concluded that the proposed annexation areas were "definitely" in the town's path of growth; the vacant land in the town consisted of small parcels on which it would be difficult to develop a large building such as a shopping center, and it contained a flood plain. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

§ 21-1-33. Hearing on petition; decree.

(1) If the chancellor finds from the evidence presented at the hearing that the proposed enlargement or contraction is reasonable and is required by the public convenience and necessity and, in the event of an enlargement of a municipality, that reasonable public and municipal services will be rendered in the annexed territory within a reasonable time and that the governing authority of the municipality complied with the provisions of Section 21-1-27, the chancellor shall enter a decree approving, ratifying and confirming the proposed enlargement or contraction, and describing the boundaries of the municipality as altered. In so doing the chancellor shall have the right and the power to modify the proposed enlargement or contraction by decreasing the territory to be included in or excluded from the municipality, as the case may be.

(2) If the chancellor shall find from the evidence that the proposed enlargement or contraction, as the case may be, is unreasonable and is not required by the public convenience and necessity, or in the event of an enlargement of a municipality, that the governing authority of the municipality failed to comply with the provisions of Section 21-1-27, then he shall enter a decree denying the enlargement or contraction.

(3) In any event, the decree of the chancellor shall become effective after the passage of ten (10) days from the date thereof or, in the event an appeal is taken therefrom, within ten (10) days from the final determination of the appeal. In any proceeding under this section the burden shall be upon the municipal authorities to show that the proposed enlargement or contraction is reasonable.

HISTORY: Codes, 1942, § 3374-13; Laws, 1950, ch. 491, § 13; Laws, 2016, ch. 443, § 2, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment designated the former first and second sentences as (1), the former third sentence as (2), and the former fourth and last sentences as (3); inserted "and that the...Section 21-1-27" in (1); inserted "or in the event...Section 21-1-27" in (2); inserted "(10)" both times it appears in (3); and made minor stylistic changes throughout.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
9. Judicial review.

1. In general.

Chancery court's approval of a town's annexation request was supported by the record because the need-to-expand factor favored the town since it consisted of only 1.6 square miles, was the county seat had never annexed territory, and experienced spillover development; the chancery court's findings considered the town's need for land, the remaining vacant land within the municipality, spillover development, the town's need for developmental land, and the need to expand the town's tax base. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

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Chancery court's approval of a town's annexation request was supported by the record because its determination that the natural-barriers factor favored annexation was reasonable; an urban planning consultant testified that no natural barriers existed to make the provision of services cost prohibitive to the proposed annexation area and that a river to the east of the town did not constitute a natural barrier because the town already was providing water and sewer across the river. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

Chancery court's approval of a town's annexation request was supported by the record because even supposing the town provided water that occasionally was insufficient, the town provided substantial and credible evidence that the residents of the proposed annexation area received benefits from the town without paying the corresponding taxes. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

Chancery court's approval of a town's annexation request was supported by the record because an urban planning consultant testified that the town was the county seat, that it consisted of only 1.6 square miles, that it had has never annexed before, and that the relocation of a highway bypass also favored annexation; the town was not required to produce a resident in favor of annexation. In re Enlarging, Extending & Defining the Corp. Limits & Boundaries of the Town of Leakesville v. Town of Leakesville, 283 So. 3d 701, 2019 Miss. LEXIS 390 (Miss. 2019).

9. Judicial review.

Chancellor's partial grant of a town's annexation petition was appropriate because the chancellor considered all of the evidence presented and balanced the town's annexation request against objectors' concerns. Furthermore, the chancellor's findings were based on substantial, credible evidence, were not manifestly wrong, and were within the chancellor's discretion. Wilson v. Town of Terry (In re Enlargement & Extension of the Mun. Boundaries of the Town of Terry), 227 So. 3d 917, 2017 Miss. LEXIS 132 (Miss. 2017).

§ 21-1-37. Appeal.

JUDICIAL DECISIONS

I. Under Current Law.

2. Time limitations.

City's appeal of a decision denying annexation was timely where the 10-day time to file an appeal in Miss. Code Ann. §§ 21-1-21 and 21-1-37 was procedural, that procedural requirement conflicted with Miss. R. App. P. 1, 3, and 4, and the city had filed the appeal within 15 days of the date the judgment was entered. *Wood v. Warren,* 193 So. 2d 123 (Miss. 1966), and *Fisher v. Crowe*, 289 So. 2d 921 (Miss. 1974), declaring that an aggrieved party had to appeal an annexation decree within 10 days were overruled. City of Petal v. Gulf South Pipeline Co., LP (In re Enlargement & Extension of the Mun. Boundaries of the City of Petal), — So. 3d —, 2020 Miss. LEXIS 319 (Miss. Sept. 10, 2020).

INCLUSION OF STATE INSTITUTIONAL FACILITIES

Sec.

21-1-59. Municipalities may not incorporate state institutions without consent; effect of annexation crossing county lines on schools in annexed areas; annexations prior to March 18, 1987 ratified; municipalities authorized to enter agreements with enterprises operating certain projects provided that such municipalities not change boundaries to include project site.

§ 21-1-59. Municipalities may not incorporate state institutions without consent; effect of annexation crossing county lines on schools in annexed areas; annexations prior to March 18, 1987 ratified; municipalities authorized to enter agreements with enterprises operating certain projects provided that such municipalities not change boundaries to include project site.

(1) No municipality shall be created or shall change its boundaries so as to include within the limits of such municipality any of the buildings or grounds of any state institution, unless consent thereto shall be obtained in writing from the board of trustees of such institution or such other governing board or body as may be created for the control of such institution. Inclusion of the buildings or grounds of any state institution within the area of a municipal incorporation or expansion without the consent hereinabove required shall be voidable at the option of the affected institution within six (6) months after the institution becomes aware of the inclusion. Upon consent to inclusion within the area of a municipal incorporation or expansion, a state institution may require, subject to agreement of the municipality involved, conditions relating to land use development, zoning requirements, building codes and delivery of governmental services which shall be applicable to the buildings or grounds of the institution included in the municipality.

Provided further, that any future changes in the boundaries of a presently existing municipality which extends into or further extends into a county other than the county in which the municipality's principal office is located shall not affect the public school district located in the annexed area, unless and until consent thereto shall have first been obtained in writing from the board of trustees of the school district proposed to be partially or wholly included in the change of municipal boundaries.

Provided further, that any change in the boundaries of a presently existing municipality of any Class 1 county having two (2) judicial districts, being traversed by U.S. Highway 11 which intersects U.S. Highway 84, shall not affect the public school district located in the annexed area and shall not change the governmental unit to which the school taxes are paid, unless approved by referendum as hereinafter provided.

In the event that twenty percent (20%) of the registered voters residing within the area to be annexed by a municipality petition the governing body of such municipality for a referendum on the question of inclusion in the municipal school district within sixty (60) days of public notice of the adoption of such ordinance, such notice given in the same manner and for the same length of time as is provided in Section 21-1-15 with regard to the creation of municipal corporations, the governing body of the county in which the area to be annexed is located shall hold a referendum of all registered voters residing within the area to be annexed on the question of inclusion in the municipal school district. Approval of the ordinance shall be made by a majority vote of the qualified electors voting in said referendum to be held within ninety (90) days from the date of filing and certification of the petition provided for herein on the question of such extension or contraction. The referendum shall be held in the same manner as are other county elections.

The inclusion of buildings or grounds of any state institution within the area of a municipal incorporation or expansion in any proceedings creating a municipality or enlarging the boundaries of a municipality prior to the effective date of Senate Bill 2307, 1987 Regular Session (Chapter 359, eff March 18, 1987), is hereby ratified, confirmed and validated, regardless of whether such inclusion was in conformity with the requirements of this section at the time of such proceedings, and such inclusion shall not be void or voidable by any affected state institution on or after the effective date of Senate Bill 2307, 1987 Regular Session (Chapter 359, eff March 18, 1987). This paragraph shall not be applicable to and shall not be construed to validate the inclusion of buildings or grounds of any state institution within the area of a municipal incorporation or expansion where such inclusion or the proceedings involving such inclusion were declared invalid or void in a final adjudication of a court of competent jurisdiction prior to the effective date of Senate Bill 2307, 1987 Regular Session (Chapter 359, eff March 18, 1987), and the decision of such court was not appealed within the applicable time period for appeals from such court or was not overturned by any court to which an appeal may have been made.

(2) The governing authorities of a municipality may enter into an agreement with an enterprise operating a project as defined in Section 57-75-

5(f)(iv)1, Section 57-75-5(f)(xxi), Section 57-75-5(f)(xxviii) or Section 57-75-5(f)(xxix) providing that the municipality shall not change its boundaries so as to include within the limits of such municipality the project site of such a project unless consent thereto shall be obtained in writing from the enterprise operating the project. Such agreement may be for a period not to exceed thirty (30) years. Such agreement shall be binding on future governing authorities of such municipality.

HISTORY: Codes, 1930, § 2378; 1942, § 3374-18; Laws, 1928, ch. 29; Laws, 1950, ch. 491, § 18; Laws, 1977, ch. 379; Laws, 1978, ch. 312, § 1; Laws, 1987, ch. 359; Laws, 2000, 3rd Ex Sess, ch. 1, § 18; Laws, 2007, ch. 303, § 6; Laws, 2013, 1st Ex Sess, ch. 1, § 13; Laws, 2016, 1st Ex Sess, ch. 1, § 10, eff from and after passage (approved Feb. 8, 2016.).

Amendment Notes — The 2016 1st Extraordinary Session amendment inserted "or Section 57-75-5(f)(xxix)" in the first sentence of (2), and made a related stylistic change.

CHAPTER 3.

CODE CHARTERS

Sec.

21-3-3. Elective officers; certain officers may be appointive.
21-3-5. Appointive officers.
21-3-7. Number of aldermen and their election.
21-3-19. Regular meetings of board of aldermen; recess of meetings; quorum.

§ 21-3-3. Elective officers; certain officers may be appointive.

The elective officers of all municipalities operating under a code charter shall be the mayor, the aldermen, municipal judge, the marshal or chief of police, the tax collector and the tax assessor. From and after July 1, 2017, the governing authorities of the municipality shall appoint a city or town clerk who shall likewise serve as an officer of the municipality. However, the governing authorities of the municipality shall have the power, by ordinance, to combine the office of clerk or marshal with the office of tax collector and/or tax assessor. Such governing authorities shall have the further power to provide that all or any of such officers, except those of mayor and aldermen, shall be appointive, in which case the marshal or chief of police, the tax collector, the tax assessor, and the city or town clerk, or such of such officers as may be made appointive, shall be appointed by the governing authorities. Any action taken by the governing authorities to make any of such offices appointive shall be by ordinance of such municipality, and no such ordinance shall be adopted within ninety (90) days prior to any regular general election for the election of municipal officers. No such ordinance shall become effective during the term of office of any officer whose office shall be affected thereby. If any such office is made appointive, the person appointed thereto shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause, and it shall be

discretionary with the governing authorities whether or not to require such person appointed thereto to reside within the corporate limits of the municipality in order to hold such office.

HISTORY: Codes, 1892, § 2978; 1906, § 3375; Hemingway's 1917, § 5903; 1930, § 2511; 1942, § 3374-35; Laws, 1904, ch. 156; Laws, 1910, ch. 201; Laws, 1934, ch. 315; Laws, 1950, ch. 491, § 35; Laws, 1952, chs. 362, 363; Laws, 1966, Ex Sess, ch. 42, § 1; Laws, 1985, ch. 488; Laws, 2016, ch. 507, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The word "such" was deleted so that "...appointed by the such governing authorities" would read as "... appointed by the governing authorities" in the fourth sentence. The Joint Committee ratified the correction at its August 5, 2016, meeting.

Amendment Notes — The 2016 amendment, effective July 1, 2017, substituted "collector and the tax assessor" for "collector, the tax assessor, and the city or town clerk" at the end of the first sentence; added the second sentence; and made a minor stylistic change.

JUDICIAL DECISIONS

1. In general.

Mayor of a city was entitled to terminate a former municipal judge, with or without cause at any time, because the judge, who was an appointed municipal judge, was an at-will employee. Moreover, an employee handbook which stated in its introduction that nothing in the handbook implied or assured employment or created an employment contract did not alter the at-will status of the employment relationship. Jones v. City of Hattiesburg, 228 So. 3d 816, 2017 Miss. App. LEXIS 14 (Miss. Ct. App.), cert. denied, 229 So. 3d 118, 2017 Miss. LEXIS 372 (Miss. 2017).

§ 21-3-5. Appointive officers.

From and after the expiration of the terms of office of present municipal officers, the mayor and board of aldermen of all municipalities operating under this chapter shall have the power and authority to appoint a street commissioner, and such other officers and employees as may be necessary, and to prescribe the duties and fix the compensation of all such officers and employees. All officers and employees so appointed shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause. The governing authorities of municipalities shall have the power and authority, in their discretion, to appoint the same person to any two (2) or more of the appointive offices, and in a municipality having a population of less than fifteen thousand (15,000), according to the latest available federal census, a member of the board of aldermen may be appointed to the office of street commissioner. In municipalities not having depositories, the clerk shall serve as ex officio treasurer. The municipal governing authorities shall require all officers and employees handling or having the custody of any public funds of such city to give bond, with sufficient surety, to be payable, conditioned and approved as provided by

law, in an amount to be determined by the governing authority (which shall be not less than Fifty Thousand Dollars ($50,000.00)), the premium on same to be paid from the municipal treasury. The terms of office or employment of all officers and employees so appointed shall expire at the expiration of the term of office of the governing authorities making the appointment, unless such officers or employees shall have been sooner discharged as herein provided. All officers and employees so appointed are authorized to serve until the appointment and qualification of their successors not exceeding the limitation period provided in Section 21-15-41.

HISTORY: Codes, 1942, § 3374-37; Laws, 1950, ch. 491, § 37; Laws, 1984, ch. 409; Laws, 1986, ch. 458, § 22; Laws, 1988, ch. 488, § 2; Laws, 2009, ch. 467, § 7, eff from and after July 1, 2009; Laws, 2018, ch. 376, § 3, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment added the last sentence.

JUDICIAL DECISIONS

2. Discharge of officers.

Mayor of a city was entitled to terminate a former municipal judge, with or without cause at any time, because the judge, who was an appointed municipal judge, was an at-will employee. Moreover, an employee handbook which stated in its introduction that nothing in the handbook implied or assured employment or created an employment contract did not alter the at-will status of the employment relationship. Jones v. City of Hattiesburg, 228 So. 3d 816, 2017 Miss. App. LEXIS 14 (Miss. Ct. App.), cert. denied, 229 So. 3d 118, 2017 Miss. LEXIS 372 (Miss. 2017).

§ 21-3-7. Number of aldermen and their election.

(1) Except as provided in subsection (3) of this section, in all municipalities having a population of less than ten thousand (10,000) according to the latest available federal census, there shall be five (5) aldermen, which aldermen may be elected from the municipality at large, or, in the discretion of the municipal authority, the municipality may be divided into four (4) wards, with one (1) alderman to be selected from each ward and one (1) from the municipality at large. On a petition of twenty percent (20%) of the qualified electors of any such municipality, the provisions of this section as to whether or not the aldermen shall be elected from wards or from the municipality at large shall be determined by the vote of the majority of the qualified electors of the municipality voting in a special election called for that purpose. All aldermen shall be selected by vote of the entire electorate of the municipality. Those municipalities which determine to select one (1) alderman from each of the four (4) wards shall select one (1) from the candidates for alderman from each particular ward who shall be a resident of said ward by majority vote of the entire electorate of the municipality.

(2) Except as provided in subsection (4) of this section, in all municipalities having a population of ten thousand (10,000) or more, according to the latest available federal census, there shall be seven (7) aldermen, which

aldermen may be elected from the municipality at large, or, in the discretion of the municipal authority, the municipality may be divided into six (6) wards, with one (1) alderman to be selected from each ward and one (1) from the municipality at large. On a petition of twenty percent (20%) of the qualified electors of any such municipality, the provisions of this section as to whether or not the aldermen shall be elected from wards or from the municipality at large shall be determined by the vote of the majority of the qualified electors of the municipality voting in a special election called for that purpose. This section in no way affects the number of aldermen, councilmen, or commissioners of any city operating under a special charter. All aldermen shall be selected by vote of the entire electorate of the municipality. Those municipalities which determine to select one (1) alderman from each of the six (6) wards shall select one (1) of the candidates for alderman from each particular ward by majority vote of the entire electorate of the municipality.

(3) In any municipality having a population of five hundred (500) or less according to the latest available federal census, there may be three (3) aldermen. The change from five (5) aldermen to three (3) aldermen shall be approved by a majority of the qualified electors of the municipality voting in a special election held for this purpose.

(4) If a municipality has a population according to the 2010 federal decennial census that is less than ten thousand (10,000) and whose population according to the 2020 federal decennial census is ten thousand (10,000) or more, the municipality may elect to continue with five (5) aldermen and not increase to seven (7) aldermen by the adoption of a resolution by a majority of the board of aldermen expressing the intent to continue with five (5) aldermen and not increase to seven (7) aldermen. Before the adoption of such resolution, the proposed resolution shall be published for three (3) consecutive weeks in at least one (1) newspaper published in the municipality. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the adoption of the same and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper be published in the municipality, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in such municipality and, in addition, by posting a copy of such resolution for at least twenty-one (21) days next preceding the date fixed to adopt the resolution at three (3) public places in such municipality. If ten percent (10%) of the qualified electors of the municipality or fifteen hundred (1,500) whichever is lesser, shall file a written protest against the resolution on or before the date specified in the resolution, then an election on the question shall be called. Notice of such election shall be signed by the clerk of the municipality and shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the municipality. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper be published in the municipality, then such notice shall be given by publishing the

same for the required time in some newspaper having a general circulation in such municipality and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding the date fixed to adopt the resolution at three (3) public places in such municipality. At the election, all qualified electors of such municipality may vote, and the ballots used in the election shall have printed thereon a brief statement of the purpose of the increase in the number of aldermen and the words "FOR THE INCREASE IN THE NUMBER OF ALDERMEN FROM 5 TO 7" and on a separate line, "AGAINST THE INCREASE IN NUMBER OF ALDERMEN FROM 5 TO 7" and the voters shall vote by placing a cross (X) or check (√) opposite their choice on the proposition. The results of the election shall be certified by the municipal election commissions and spread on the minutes of the municipality. If a majority of electors who voted in the election vote in favor of maintaining five (5) aldermen and not increasing the number to seven (7) aldermen, the number of aldermen shall remain at five (5) and shall not be increased except by special election called for such purpose. If a majority of electors who voted in the election vote against maintaining five (5) aldermen and in favor of increasing the number to seven (7) aldermen, the number of aldermen for such municipality shall be increased to seven (7) aldermen and the number shall not be decreased except by act of the Legislature.

HISTORY: Codes, 1942, § 3374-36; Laws, 1950, ch. 491, § 36; Laws, 1962, ch. 537; Laws, 2016, ch. 365, § 1, eff from and after July 1, 2016; Laws, 2018, ch. 329, § 1, eff from and after July 1, 2018.

Amendment Notes — The 2016 amendment designated the previously undesignated first and second paragraphs as (1) and (2), respectively, and therein inserted parenthetical numbers, made minor stylistic changes, and added the exception at the beginning of (1); and added (3).

The 2018 amendment added the exception at the beginning of (2); and added (4).

§ 21-3-19. Regular meetings of board of aldermen; recess of meetings; quorum.

(1) The mayor and board of aldermen shall hold regular meetings the first Tuesday of each month at such place and hour as may be fixed by ordinance, and may, on a date fixed by ordinance, hold a second regular meeting in each month at the same place established for the first regular meeting provided the second meeting shall be held at a day and hour fixed by the ordinance which shall be not less than two (2) weeks from the first day of the first regular meeting and not more than three (3) weeks from the date thereof. When a regular meeting of the mayor and board of aldermen shall fall upon a holiday, the mayor and board shall meet the following day. The mayor and board may recess either meeting from time to time to convene on a day fixed by an order of the mayor and board entered on its minutes, and may transact any business coming before it for consideration. In all cases it shall require a majority of all aldermen to constitute a quorum for the transaction of business. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2).

(2) The mayor and board of aldermen may, pursuant to Section 21-17-17, set a day other than Tuesday for the holding of their regular monthly meeting.

HISTORY: Codes, 1892, § 2989; 1906, § 3387; Hemingway's 1917, § 5915; 1930, § 2523; 1942, § 3374-43; Laws, 1950, ch. 491, § 43; Laws, 1960, ch. 423; Laws, 1973, ch. 324, § 1; Laws, 1979, ch. 403, § 2; Laws, 2012, ch. 442, § 2; Laws, 2017, ch. 319, § 2, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment substituted "Section 25-41-5(2)" for "Section 25-41-5(2)(b)" at the end of (1); deleted "Mississippi Code of 1972" following "Section 21-17-17" in (2); and made minor stylistic changes.

CHAPTER 5.

COMMISSION FORM OF GOVERNMENT

Sec.
21-5-13. Meetings of council; quorum; voting.

§ 21-5-13. Meetings of council; quorum; voting.

(1) Regular public meetings of the council shall be held on the first day of July after the election of the mayor and councilmen (or commissioners) that is not on a weekend, and thereafter at least twice each month, at such time as the council may by resolution provide. When a regular meeting of the council shall fall on a holiday, the council shall meet the following day.

Special meetings may be called at any time by the mayor or by two (2) councilmen. At any and all meetings of the council, a majority of all the members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2). The affirmative vote of a majority of all the members of the council shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever, unless a greater number is provided for in this chapter. Upon every vote taken by the council, the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(2) The council may, pursuant to Section 21-17-17, set a day other than Monday for the holding of its regular bimonthly meeting.

HISTORY: Codes, Hemingway's 1917, § 6049; 1930, § 2637; 1942, § 3374-51; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 51; Laws, 1973, ch. 324, § 2; Laws, 1979, ch. 403, § 3; Laws, 1987, ch. 503, § 1; Laws, 2010, ch. 319, § 4; Laws, 2012, ch. 442, § 3; Laws, 2017, ch. 319, § 3, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment substituted "Section 25-41-5(2)" for "Section 25-41-5(2)(b)" at the end of the second sentence of the second paragraph of (1).

CHAPTER 7.
COUNCIL FORM OF GOVERNMENT

Sec.
21-7-9. Meetings of council; quorum; voting.

§ 21-7-9. Meetings of council; quorum; voting.

(1) Regular public meetings of the council shall be held on the first Tuesday after the first Monday in January after the election of the members of the council and monthly thereafter on the first Tuesday in each month. When a regular meeting of the council shall fall upon a holiday, the council shall meet the following day. Special meetings may be called at any time by the mayor or by three (3) members of the council. At any and all meetings of the council, five (5) members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2). The affirmative vote of a majority of the members of the quorum at any meeting shall be necessary to adopt any motion, resolution, or ordinance or to pass any measure whatever unless otherwise provided in this chapter. Upon every vote taken by the council the yeas and nays shall be called and recorded and every motion, resolution, or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(2) The council may, pursuant to Section 21-17-17, set a day other than Tuesday for the holding of its regular monthly meeting.

HISTORY: Codes, 1942, § 3825.7-04; Laws, 1948, ch. 382, § 4; Laws, 1973, ch. 324, § 4; Laws, 1979, ch. 403, § 4; Laws, 1987, ch. 503, § 2; Laws, 2012, ch. 442, § 4; Laws, 2017, ch. 319, § 4, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment substituted "Section 25-41-5(2)" for "Section 25-41-5(2)(b)" at the end of the fifth sentence of (1).

CHAPTER 8.
MAYOR-COUNCIL FORM OF GOVERNMENT

Sec.
21-8-11. Council officers; meetings; quorum; voting; council members shall not serve as members of commissions or boards under their control.
21-8-23. Municipal departments; surety bond.

§ 21-8-7. Election of mayor and council members; reapportionment; vacancies; offices; clerical assistance and expenses.

HISTORY: Laws, 1973, ch. 328, § 4; Laws, 1974, ch. 336 § 1; Laws, 1976, ch. 355, § 4; Laws, 1977, ch. 310; Laws, 1980, ch. 373; Laws, 1987, ch. 509, § 1; Laws, 1990,

ch. 304, § 1; Laws, 1994, ch. 358, § 1; Laws, 2001, ch. 302, § 1; Laws, 2010, ch. 319, § 2; Laws, 2011, ch. 496, § 1, eff from and after passage (approved Apr. 6, 2011); brought forward without change, Laws, 2019, ch. 340, § 5, eff from and after July 1, 2019.

Editor's Notes — This section was brought forward without change by Laws of 2019, ch. 340, § 5, effective from and after July 1, 2019. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2019 amendment brought the section forward without change.

§ 21-8-9. Council to exercise legislative power.

JUDICIAL DECISIONS

1. Council as final policymaker.

City council held the power of the purse, and the obvious conclusion was that the city was likewise the final policymaker for funding decisions; the council could override a veto, thus giving the council ultimate say, and because the council had the right of final review, it was the final policymaker. Advanced Tech. Bldg. Solutions, L.L.C. v. City of Jackson, 817 F.3d 163, 2016 U.S. App. LEXIS 4750 (5th Cir. Miss.), cert. denied, — U.S. —, 137 S. Ct. 297, 196 L. Ed. 2d 216, 2016 U.S. LEXIS 6071 (U.S. 2016).

§ 21-8-11. Council officers; meetings; quorum; voting; council members shall not serve as members of commissions or boards under their control.

(1) During the first council meeting of a new council, the council shall elect one (1) member as president of the council and one (1) of its other members as vice president, both of whom shall serve at the pleasure of the council. The president shall preside at all council meetings. In the event of the president's absence or disability, the vice president shall act as president. In the event of the absence of the president and vice president, a presiding officer shall be designated by majority vote of the council to serve during such meeting. All councilmen, including the president, shall have the right to vote in the council at all times, even when serving as acting mayor.

(2) Regular public meetings of the council shall be held on the first Tuesday after the first day of July after the election of the members of the council that is not on a weekend and at least monthly thereafter on the first Tuesday after the first Monday in each month, or at such other times as the council by order may set. Special meetings may be called at any time by the mayor or a majority of the members of the council. At any and all meetings of the council, a majority of the members thereof shall constitute a quorum and the affirmative vote of a majority of the quorum at any meeting shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever unless otherwise provided in this chapter. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2). Upon every vote taken by the council, the yeas and nays shall be recorded and every motion, resolution or ordinance shall be reduced to

writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(3) No councilman shall be a member of any commission or board appointed or designated herein, or serve as a member of any commission or board under their jurisdiction except as otherwise provided by law.

HISTORY: Laws, 1973, ch. 328, § 6; Laws, 1976, ch. 355, § 5; Laws, 1987, ch. 503, § 3; Laws, 2010, ch. 319, § 5; Laws, 2012, ch. 442, § 5; Laws, 2017, ch. 319, § 5, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment substituted "Section 25-41-5(2)" for "Section 25-41-5(2)(b)" at the end of the fourth sentence of (2).

JUDICIAL DECISIONS

1. In general.

Circuit court properly concluded that a city council's vote did not constitute a majority of the quorum under Miss. Code Ann. 21-8-11, where only two of the four members present at the city council meeting voted to adopt the rezoning ordinance on the property. City of Jackson v. Allen, 242 So. 3d 8, 2018 Miss. LEXIS 53 (Miss. 2018).

§ 21-8-15. Mayor to exercise executive power.

JUDICIAL DECISIONS

1. In general.

In an election contest filed by a mayor's opponent, the mayor's appeal did not have to be dismissed for the city council's failure to authorize an appeal because (1) no statute required such authorization, and (2) it was not shown that the city council expressly prohibited the appeal. McAdams v. Perkins, 204 So. 3d 1257, 2016 Miss. LEXIS 506 (Miss. 2016).

Even if the mayor could direct the executive director of the Joint Redevelopment Authority (JRA), it was the JRA commissioners, not its executive director, who made the actual decisions regarding which projects to support; the mayor's statutory authority to influence the JRA was constrained, and because the city council had policymaking authority over funding, the city was not liable for the mayor's actions. Advanced Tech. Bldg. Solutions, L.L.C. v. City of Jackson, 817 F.3d 163, 2016 U.S. App. LEXIS 4750 (5th Cir. Miss.), cert. denied, — U.S. —, 137 S. Ct. 297, 196 L. Ed. 2d 216, 2016 U.S. LEXIS 6071 (U.S. 2016).

§ 21-8-17. General powers and duties of mayor; approval of ordinances.

JUDICIAL DECISIONS

1. Council as final policymaker.

City council held the power of the purse, and the obvious conclusion was that the city was likewise the final policymaker for funding decisions; the council could override a veto, thus giving the council ultimate say, and because the council had the right of final review, it was the final policymaker. Advanced Tech. Bldg. Solutions, L.L.C. v. City of Jackson, 817 F.3d 163, 2016 U.S. App. LEXIS 4750 (5th Cir. Miss.), cert. denied, — U.S. —, 137 S. Ct. 297, 196 L. Ed. 2d 216, 2016 U.S. LEXIS 6071 (U.S. 2016).

§ 21-8-23. Municipal departments; surety bond.

(1) The municipality may have a department of administration and such other departments as the council may establish by ordinance. All of the administrative functions, powers and duties of the municipality shall be allocated and assigned among and within such departments.

(2) Each department shall be headed by a director, who shall be appointed by the mayor and confirmed by an affirmative vote of a majority of the council present and voting at any such meeting. Each director shall serve during the term of office of the mayor appointing him and until the appointment and qualification of the director's successor not exceeding the limitation period provided in Section 21-15-41.

(3) The mayor may, in his discretion, remove the director of any department. Directors of departments shall be excluded from the coverage of any ordinance or general law providing for a civil service system in the municipality; provided, however, all individuals serving as heads of departments at the time of the municipality's adoption of the mayor-council form as described in this chapter shall continue to be covered by the provisions of the civil service system in effect at the time the mayor-council form is adopted.

(4) Directors of departments shall appoint subordinate officers and employees within their respective departments and may, with approval of the mayor, remove such officers and employees subject to the provisions of any ordinance establishing a civil service system where that system is effective in the municipality, or other general law; provided, however, that the council may provide by ordinance for the appointment and removal of specific boards or commissions by the mayor.

(5) Whenever the city council is authorized by any provision of general law to appoint the members of any board, authority or commission, such power of appointment shall be deemed to vest in the mayor with the confirmation of an affirmative vote of a majority of the council present and voting at any meeting.

(6) The council shall also require all officers and employees handling or having the custody of any of the public funds of such municipality to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the council (which shall not be less than Fifty Thousand Dollars ($50,000.00)), the premium on which bonds shall be paid by the city.

HISTORY: Laws, 1973, ch. 328, § 12; Laws, 1976, ch. 355, § 10; Laws, 1986, ch. 458, § 25; Laws, 1987, ch. 509, § 6; Laws, 2009, ch. 467, § 8; Laws, 2017, ch. 399, § 3, eff from and after July 1, 2017; Laws, 2018, ch. 376, § 4, eff from and after July 1, 2018.

Amendment Notes — The 2017 amendment deleted "and until the appointment and qualification of his successor" from the end of (2).

The 2018 amendment added "and until the appointment...Section 21-15-41" at the end of (2).

CHAPTER 9.

COUNCIL-MANAGER PLAN OF GOVERNMENT

Sec.
21-9-19. Conduct of municipal council election; declaring results.
21-9-39. Meetings of the council; quorum; voting.

§ 21-9-15. Municipal council; election of councilmen and mayor; terms.

HISTORY: Codes, 1942, §§ 3825.5-09, 3825.5-35; Laws, 1948, ch. 385, §§ 9, 35; Laws, 1952, ch. 372, §§ 8, 18; Laws, 1962, ch. 548, § 3; Laws, 1971, ch. 384, § 1; Laws, 1974, ch. 439, § 2; Laws, 1977, ch. 302, § 1; Laws, 1988, ch. 462, § 1, eff from and after January 3, 1989 (the date the United States Attorney General interposed no objection to the amendment); brought forward without change, Laws, 2019, ch. 340, § 6, eff from and after July 1, 2019.

Editor's Note — This section was brought forward without change by Laws of 2019, ch. 340, § 6, effective from and after July 1, 2019. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2019 amendment brought the section forward without change.

§ 21-9-19. Conduct of municipal council election; declaring results.

At all elections held to choose a mayor and councilmen, or any of them, the choice of the person or persons voting shall be indicated and the ballots shall be marked in like manner as is provided by law for general state and county elections.

The poll managers at all special and general elections for mayor and councilmen, or any of them, shall immediately, upon the closing of the polls, count the ballots and ascertain the number of votes cast in each voting precinct for each of the candidates and make return thereof to the municipal election commissioners. On the day following any special or general election, the municipal election commissioners shall canvass the returns so received from all the voting precincts, and shall within six (6) business days after such special or general election, deliver to each person receiving the highest number of votes a certificate of election. If it shall appear by the returns that any two (2) candidates for mayor or councilmen, have received an equal number of votes, the election shall be decided by a toss of a coin or by lot, fairly and publicly drawn under the direction of the election commissioners, with the aid of a friend of each such candidates, and a certificate of election shall be given accordingly.

The election commissioners shall, within ten (10) business days after any special or general election, certify to the Secretary of State the name or names of the person or persons elected at such special or general election, and the

Secretary of State shall, immediately upon receiving such certificates, deliver the same to the Governor, who shall immediately issue commissions to the persons mentioned in certificate.

HISTORY: Codes, 1942, §§ 3825.5-11, 3825.5-12; Laws, 1948, ch. 385, §§ 11, 12; Laws, 2017, ch. 441, § 184, eff from and after passage (approved Apr. 18, 2017.).

Amendment Notes — The 2017 amendment, effective April 18, 2017, deleted the second sentence of the first paragraph, which read: "In all cases in which two or more persons are to be elected to the same office, the failure on the part of any elector to indicate his choice for as many candidates as there are officers to be elected to such office, shall render his ballot void as to any candidate voted for by him for such office"; in the second paragraph, substituted "poll managers" for "managers of election" in the first sentence, in the second sentence, substituted "municipal election" for "said election" and "six (6) business days" for "five days," and in the third sentence, inserted "(2)" and "a toss of a coin or by" and substituted "drawn under the direction of the election" for "drawn by the election"; and in the last paragraph, substituted "ten (10) business days" for "five days."

§ 21-9-39. Meetings of the council; quorum; voting.

(1) Regular public meetings of the council shall be held on the first Tuesday of each month, at such time of day as the council may provide. When a regular meeting of the council shall fall on a holiday, the council shall meet the following day. Special meetings may be called at any time by the mayor or two (2) councilmen on at least two (2) days' notice to the mayor and each member of the council. A special meeting may also be held at any time by written consent of the mayor and all members of the council. At all meetings of the council, a majority of the members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2). The affirmative vote of a majority of all of the members of the council shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever, unless a greater number is provided in this chapter. Upon every vote taken by the council, the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon. The city or town manager may be appointed only at a regular meeting of the council with no less than a majority of the members, plus one (1), in attendance.

(2) The council may, pursuant to Section 21-17-17, set a day other than Tuesday for the holding of its regular monthly meeting.

HISTORY: Codes, 1942, § 3825.5-28; Laws, 1948, ch. 385, § 28; Laws, 1952, ch. 372, § 15; Laws, 1973, ch. 324, § 3; Laws, 1979, ch. 403, § 5; Laws, 1987, ch. 503, § 4; Laws, 2012, ch. 442, § 6; Laws, 2017, ch. 319, § 6, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment substituted "Section 25-41-5(2)" for "Section 25-41-5(2)(b)" at the end of the sixth sentence of (1).

CHAPTER 15.

OFFICERS AND RECORDS

Sec.

21-15-41. Limitations period for serving in interim or hold-over capacity in certain appointed positions; objections by registered voter municipal residents to matters relating to violation of section.

§ 21-15-41. Limitations period for serving in interim or hold-over capacity in certain appointed positions; objections by registered voter municipal residents to matters relating to violation of section.

(1) No person shall serve in an interim or hold-over capacity for longer than ninety (90) days in a position that is required by law to be filled by appointment of the governing body of a municipality, or by mayoral appointment with the advice and consent of the council or aldermen. If such position is not filled within ninety (90) days after the expiration of the position's term, or within ninety (90) days after the date of appointment if an interim appointment, the hold-over service or interim appointment shall terminate and no municipal funds may thereafter be expended to compensate the person serving in the position. Further, any action or vote taken by such person after the ninety-day period shall be invalid and without effect. If a council or board of aldermen rejects, or otherwise fails to confirm, an individual submitted by the mayor for appointment, the mayor may not resubmit or reappoint the same individual for that position during the remainder of the mayor's current term in office.

(2) It is the intent of the Legislature that the provisions of this section shall apply to all appointees serving in a hold-over or interim capacity on July 1, 2018. For such appointees, the limitation period for serving in a hold-over or interim capacity shall be no longer than ninety (90) days from July 1, 2018.

(3) Any registered voter who resides in the municipality may file all objections to any matters relating to an alleged violation of this section in the chancery court of the county where the municipality is located. The chancery court is authorized to adjudicate and determine relief as may be proper. The court shall award reasonable attorney's fees and costs to the prevailing party.

HISTORY: Laws, 2016, ch. 369, § 1; Laws, 2017, ch. 399, § 2, eff from and after July 1, 2017; Laws, 2018, ch. 376, § 2, eff from and after July 1, 2018.

Amendment Notes — The 2017 amendment, in (1), rewrote the first two sentences, which read: "No person shall serve in an interim or hold-over capacity for longer than one hundred eighty (180) days after the expiration of the term to which he or she was appointed in a position that is required by law to be filled by appointment of the governing body of a municipality, or by mayoral appointment with the advice and consent of the council or aldermen, including positions on boards, commissions or authorities," and added the last two sentences; and added (2).

The 2018 amendment substituted "ninety (90) days" for "one hundred eighty (180)

days" everywhere it appears in (1), and substituted "ninety-day period" for "one hundred eighty-day period"; rewrote (2), which read: "It is the intent of the Legislature that the provisions of this section shall apply retroactively to all appointees serving in a hold-over or interim capacity on July 1, 2017, and for such appointees, the one hundred eighty-day limitation period shall commence to run on July 1, 2017"; and added (3).

CHAPTER 17.

GENERAL POWERS

Sec.
21-17-5. Powers of governing authorities.

§ 21-17-5. Powers of governing authorities.

(1) The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, the powers granted to governing authorities of municipalities in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi. Unless otherwise provided by law, before entering upon the duties of their respective offices, the aldermen or councilmen of every municipality of this state shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the municipal taxes shown by the assessment rolls and the levies to have been collectible in the municipality for the year immediately preceding the commencement of the term of office of said alderman or councilman; however, such bond shall not exceed One Hundred Thousand Dollars ($100,000.00). For all municipalities with a population more than two thousand (2,000) according to the latest federal decennial census, the amount of the bond shall not be less than Fifty Thousand Dollars ($50,000.00). Any taxpayer of the municipality may sue on such bond for the use of the municipality, and such taxpayer shall be liable for all costs in case his suit shall fail. No member of the city council or board of aldermen shall be surety for any other such member.

(2) Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of municipalities to (a) levy taxes of any kind or increase the levy of any authorized tax, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for municipal elections or establish any new elective

office, (d) change the procedure for annexation of additional territory into the municipal boundaries, (e) change the structure or form of the municipal government, (f) permit the sale, manufacture, distribution, possession or transportation of alcoholic beverages, (g) grant any donation, or (h) without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the municipality does not have a property interest.

(3) Nothing in this or any other section shall be construed so as to prevent any municipal governing authority from paying any municipal employee not to exceed double his ordinary rate of pay or awarding any municipal employee not to exceed double his ordinary rate of compensatory time for work performed in his capacity as a municipal employee on legal holidays. The governing authority of any municipality shall enact leave policies to ensure that a public safety employee is paid or granted compensatory time for the same number of holidays for which any other municipal employee is paid.

(4) The governing authority of any municipality, in its discretion, may expend funds to provide for training and education of newly elected or appointed municipal officials before the beginning of the term of office or employment of such officials. Any expenses incurred for such purposes may be allowed only upon prior approval of the governing authority. Any payments or reimbursements made under the provisions of this subsection may be paid only after presentation to and approval by the governing authority of the municipality.

(5) The governing authority of any municipality may lease the naming rights to municipal property to a private commercial entity.

HISTORY: Codes, 1892, § 2925; 1906, § 3316; Hemingway's 1917, § 5813; 1930, § 2393; 1942, § 3374-114; Laws, 1950, ch. 491, § 114; Laws, 1985, ch. 487; Laws, 1989, ch. 526, § 1; Laws, 1990, ch. 418, § 1; Laws, 1992, ch. 430 § 1; Laws, 1998, ch. 315, § 1; Laws, 2000, ch. 363, § 2; Laws, 2000, ch. 515, § 2; Laws, 2006, ch. 419, § 1; Laws, 2007, ch. 546, § 2; Laws, 2009, ch. 467, § 11; Laws, 2016, ch. 327, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment added (5).

JUDICIAL DECISIONS

ANALYSIS

I. Under Current Law.

1. In general.
2. Power to adopt particular order, resolution or ordinance.

I. Under Current Law.

1. In general.

Board of aldermen of a city lacked the authority to remove appellant as a trustee of a school district. In addition, the board's decision was made without notice or hearing, leaving appellant to the whims of the board in violation of appellant's due-process rights. Jones v. City of Canton, 278 So. 3d 1129, 2019 Miss. LEXIS 347 (Miss. 2019).

2. Power to adopt particular order, resolution or ordinance.

In an election contest filed by a mayor's opponent, the city council was authorized to hire counsel because the city council did so to represent the city's interests, even if

counsel's representation of the city and the mayor might overlap. McAdams v. Perkins, 204 So. 3d 1257, 2016 Miss. LEXIS 506 (Miss. 2016).

CHAPTER 19.

HEALTH, SAFETY, AND WELFARE

Sec.

21-19-11. Determination that property or parcel of land is menace; authorized municipal employee may make the determination that property or parcel of land is menace under certain circumstances; notification to property owner; hearing; cleaning private property; cost and penalty as assessment against property; appeal.
21-19-15. Enacting police regulations.

§ 21-19-11. Determination that property or parcel of land is menace; authorized municipal employee may make the determination that property or parcel of land is menace under certain circumstances; notification to property owner; hearing; cleaning private property; cost and penalty as assessment against property; appeal.

(1) To determine whether property or parcel of land located within a municipality is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community, a governing authority of any municipality shall conduct a hearing, on its own motion, or upon the receipt of a petition signed by a majority of the residents residing within four hundred (400) feet of any property or parcel of land alleged to be in need of the cleaning. Notice shall be provided to the property owner by:

(a) United States mail two (2) weeks before the date of the hearing mailed to the address of the subject property, except where the land or structure(s) is apparently vacant, and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least two (2) weeks before the date of a hearing on the property or parcel of land alleged to be in need of cleaning and at city hall or another place in the municipality where such notices are posted.

Any notice required by this section shall include language that informs the property owner that an adjudication at the hearing that the property or parcel of land is in need of cleaning will authorize the municipality to reenter the property or parcel of land for a period of one (1) year after final adjudication without any further hearing if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this section shall be recorded in the minutes of the governing authority in conjunction with the hearing required by this section.

If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its then condition to be a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. The governing authority may by resolution adjudicate the actual cost of cleaning the property and may also impose a penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00) or fifty percent (50%) of the actual cost, whichever is more. The cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done, and administrative costs and legal costs of the municipality. For subsequent cleaning within the one-year period after the date of the hearing at which the property or parcel of land was adjudicated in need of cleaning, upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipality's adjudication as authorized in this subsection (1), a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing no more than six (6) times in any twelve-month period with respect to removing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property, except as otherwise provided in this section for removal of hazardous substances, shall not exceed an aggregate amount of Twenty Thousand Dollars ($20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is more. The aggregate cost of removing hazardous substances will be the actual cost of such removal to the municipality and shall not be subject to the Twenty Thousand Dollar ($20,000.00) limitation provided in this subsection. The governing authority may assess the same penalty for each time the property or land is cleaned as otherwise provided in this section. The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice.

(2) When the fee or cost to clean property or a parcel of land that is one (1) acre or less does not exceed Two Hundred Fifty Dollars ($250.00), excluding administrative costs, and the property or parcel is located within a municipality having a population over one thousand five hundred (1,500), the governing

authority of the municipality may authorize one or more of its employees to determine whether the property or parcel of land is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community and the determination made by the authorized municipal employee shall be set forth and recorded in the minutes of the governing authority. Notice of this determination shall be provided to the property owner by:

(a) United States mail seven (7) days before the date of cleaning of the property or parcel of land mailed to the address of the subject property, except where the land or structure(s) is apparently vacant, and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least seven (7) days before the cleaning of the property or parcel of land and at city hall or another place in the municipality where such notices are posted.

Any notice required by this subsection shall include language that informs the property owner that the appropriate municipal official has determined that the property or parcel of land is a menace to the public health, safety and welfare of the community and in need of cleaning and the municipality is authorized to enter the property for cleaning and that the municipality is further authorized to reenter the property or parcel of land for a period of two (2) years after this cleaning without any further hearing or action if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this subsection shall be recorded in the minutes of the governing authority in conjunction with the determination made by the municipal employee in this subsection (2).

If an authorized municipal employee determines that the condition of property or parcel of land is a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. The governing authority shall by resolution adjudicate the actual cost of cleaning the property under this provision, provided the same does not exceed Two Hundred Fifty Dollars ($250.00) and may also impose a penalty not to exceed One Hundred Dollars ($100.00) or one hundred percent (100%) of the actual cost of cleaning the property, whichever is more. The cost and any penalty imposed may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the

municipality to have the work done, and additionally may include administrative costs of the municipality not to exceed Fifty Dollars ($50.00). For subsequent cleaning within the one-year period set forth in this subsection (2), upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipal official's determination as authorized in this subsection (2), a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing under this subsection (2) no more than six (6) times in any twelve-month period with respect to removing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property shall not exceed an aggregate amount of One Thousand Dollars ($1,000.00) per year under this subsection (2). The governing authority may assess the same actual costs, administrative costs and penalty for each time the property or land is cleaned as otherwise provided in this subsection (2). The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice. Upon written authority from the Secretary of State's office, for state-owned properties, a municipality may forgo the notification process that is prescribed in this subsection and proceed to clean the properties and assess costs as prescribed in this subsection, except that penalties shall not be assessed against the State of Mississippi. A determination made by an appropriate municipal employee under this subsection (2) that the state or condition of property or a parcel of land is a menace to the public health, safety and welfare of the community shall not subsequently be used to replace a hearing if subsection (1) of this section is later utilized by a municipality when the prerequisites of this subsection (2) are not satisfied.

(3) If the governing authority declares, by resolution, that the cost and any penalty shall be collected as a civil debt, the governing authority may authorize the institution of a suit on open account against the owner of the property in a court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney's fees and interest from the date that the property was cleaned.

(4)(a) If the governing authority declares that the cost and any penalty shall be collected as an assessment against the property, then the assessment above provided for shall be a lien against the property and may be enrolled in the office of the chancery clerk of the county as other liens and encumbrances are enrolled, and the tax collector of the municipality shall, upon order of the board of governing authorities, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes. The lien against the property shall be an encumbrance upon the property and shall follow title of the property.

(b)(i) All assessments levied under the provisions of this section shall be included with municipal ad valorem taxes and payment shall be enforced in the same manner in which payment is enforced for municipal ad valorem taxes, and all statutes regulating the collection of other taxes in a municipality shall apply to the enforcement and collection of the assessments levied under the provisions of this section, including utilization of the procedures authorized under Sections 17-13-9(2) and 27-41-2.

(ii) All assessments levied under the provisions of this section shall become delinquent at the same time municipal ad valorem taxes become delinquent. Delinquencies shall be collected in the same manner and at the same time delinquent ad valorem taxes are collected and shall bear the same penalties as those provided for delinquent taxes. If the property is sold for the nonpayment of an assessment under this section, it shall be sold in the manner that property is sold for the nonpayment of delinquent ad valorem taxes. If the property is sold for delinquent ad valorem taxes, the assessment under this section shall be added to the delinquent tax and collected at the same time and in the same manner.

(5) All decisions rendered under the provisions of this section may be appealed in the same manner as other appeals from municipal boards or courts are taken. However, an appeal from a decision of a municipal officer or official shall be made to the governing authority and such appeal shall be in writing, state the basis for the appeal and be filed with the city clerk no later than seven (7) days from the latest date of notice required under this section.

(6) Nothing contained under this section shall prevent any municipality from enacting criminal penalties for failure to maintain property so as not to constitute a menace to public health, safety and welfare.

HISTORY: Codes, 1930, §§ 2456, 2457; 1942, § 3374-171; Laws, 1922, ch. 220; Laws, 1950, ch. 491, § 171; Laws, 1962, ch. 545; Laws, 1964, ch. 498; Laws, 1966, ch. 593, § 1; Laws, 1971, ch. 360, § 1; Laws, 1976, ch. 335; Laws, 1977, ch. 330; Laws, 1985, ch. 350; Laws, 1987, ch. 321; Laws, 1989, ch. 322, § 1; Laws, 1991, ch. 395, § 1; Laws, 1992, ch. 479 § 1; Laws, 2001, ch. 576, § 1; Laws, 2005, ch. 427, § 1; Laws, 2009, ch. 503, § 1; Laws, 2010, ch. 471, § 1; Laws, 2010, ch. 475, § 1; Laws, 2014, ch. 372, § 1; Laws, 2014, ch. 473, § 1, eff from and after passage (approved Apr. 2, 2014.); Laws, 2018, ch. 376, § 1, eff from and after July 1, 2018; Laws, 2020, ch. 317, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2018 amendment added (2) and redesignated the remaining subsections accordingly; and added the last sentence of (5).

The 2020 amendment, in (1), in (a), inserted "except where the land or structure(s) is apparently vacant," and in the second paragraph, substituted "period of two years" for "period of one (1) year," and in the last paragraph, added the last sentence; in (2), substituted "one thousand five hundred (1,500)" for "twenty-five thousand (25,000)" in the introductory paragraph, inserted "except where the land or structure(s) is apparently vacant" in (a), substituted "period of two (2) years" for "period of one (1) year," and in the last paragraph, inserted "and may also impose...whichever is more," "and any penalty imposed," and "actual costs, administrative costs and" and added the next-to-last sentence; and in (4)(a), substituted "chancery clerk of the county as other liens and encumbrances" for "circuit clerk of the county as other judgments."

JUDICIAL DECISIONS

3. Appeals.

Chancery court erred in finding an owner in contempt for failing to complete construction by a certain date and authorized demolition of the house because the court lacked jurisdiction over any danger and/or nuisance claim brought by a city where the "governing municipal authority" (i.e., a city's board of aldermen) was the appropriate entity to conduct a hearing, with any appeal being to the circuit court, and the city did not cite to any statute, ordinance, or homeowners association's covenants to find that noncompliance with the deadline authorized the municipality to demolish the dwelling. Gaffney v. City of Richland, 202 So. 3d 238, 2016 Miss. App. LEXIS 633 (Miss. Ct. App. 2016).

§ 21-19-13. Changes of streams and bridges; clean drainage ditches and prevent erosion; levying taxes to pay for authorized works.

JUDICIAL DECISIONS

1. In general.

Estate's wrongful death claim that a city was liable due to a failure to comply with the city's ordinances and federal regulations under the National Flood Insurance Program (NFIP) failed as a matter of law because neither the federal regulations nor the city's ordinances nor Miss. Code Ann. § 21-19-13 (2015) were intended to create a private right of action, as the NFIP was a voluntary insurance program, and the NFIP's rules did not provide such a right. Hudson v. Yazoo City (Estate of Hudson), 246 So. 3d 872, 2018 Miss. LEXIS 294 (Miss. 2018).

§ 21-19-15. Enacting police regulations.

(1) The governing authorities of municipalities shall have power to make all needful police regulations necessary for the preservation of good order and peace of the municipality and to prevent injury to, destruction of, or interference with public or private property.

(2) The governing authority of a municipality shall have the power to regulate or prohibit any mill, laundry or manufacturing plant from operating whereby the soot, cinders or smoke therefrom, or the unnecessary noises thereof, may do damage to or interfere with the use or occupation of public or private property.

(3) The governing authority of a municipality shall have the power to prohibit or regulate the sale or use of firecrackers, roman candles, torpedoes, sky rockets, and any and all explosives commonly known and referred to as fireworks; the term "fireworks" shall not include toy pistols, toy canes, toy guns, other devices in which paper caps manufactured in accordance with United States Interstate Commerce Commission regulations for packing and shipping of toy paper caps are used, or toy pistol paper caps manufactured as provided herein, the sale and use of which shall be permitted at all times.

(4) The governing authority of a municipality may enact an ordinance specifying the manner and means by which a motor vehicle may be immobilized due to failure of the record title owner of the motor vehicle to pay traffic or parking fines totaling over Two Hundred Dollars ($200.00).

(5) The governing authority of a municipality may enforce an ordinance regulating or restricting parking on any public street or roadway. However, signage that adequately describes the parking regulation or restriction must be posted.

HISTORY: Codes, 1892, § 2938; 1906, § 3329; Hemingway's 1917, § 5826; 1930, § 2406; 1942, § 3374-124; Laws, 1926, ch. 274; Laws, 1950, chs. 517, 491, § 124; Laws, 1952, ch. 365, § 1; Laws, 2007, ch. 473, § 1; Laws, 2017, ch. 347, § 1; Laws, 2017, ch. 399, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 1 of Chapter 347, Laws of 2017, effective from and after July 1, 2017 (approved March 20, 2017), amended this section. Section 1 of Chapter 399, Laws of 2017, effective from and after July 1, 2017 (approved March 29, 2017), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 399, Laws of 2017, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The first 2017 amendment (ch. 347), rewrote (5), which read: "The governing authority of a municipality may not enforce an ordinance regulating or restricting parking on any public street or roadway unless signage that adequately describes the parking regulation or restriction is posted within two hundred fifty (250) feet of the portion of the street or roadway where parking is regulated or restricted."

The second 2017 amendment (ch. 399), rewrote (5), which read: "The governing authority of a municipality may not enforce an ordinance regulating or restricting parking on any public street or roadway unless signage that adequately describes the parking regulation or restriction is posted within two hundred fifty (250) feet of the portion of the street or roadway where parking is regulated or restricted."

§ 21-19-33. Regulations of circuses, shows, theaters, and other amusements.

HISTORY: Codes, 1892, § 2949; 1906, § 3340; Hemingway's 1917, § 5837; 1930, § 2416; 1942, § 3374-131; Laws, 1910, ch. 200; Laws, 1922, ch. 124; Laws, 1950, ch. 491, § 131; Laws, 1960, ch. 426; Laws, 1990, ch. 573, § 1; Laws, 1991, ch. 543, § 3; Laws, 1992, ch. 371, § 2, eff from and after July 1, 1992; brought forward without change, Laws, 2020, ch. 350, § 9, eff from and after January 1, 2021.

Editor's Notes —This section was brought forward without change by Laws of 2020, ch. 350, § 9, effective from and after January 1, 2021. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes —The 2020 amendment, effective January 1, 2021, brought the section forward without change.

CHAPTER 21.

POLICE AND POLICE DEPARTMENTS

GENERAL PROVISIONS

§ 21-21-1. Marshal or chief of police; duties; bond.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

Police chief's speech in reporting the Mayor of the city to outside law enforcement agencies for misuse of the city gasoline card was not constitutionally protected because, in light of his statutory duties, communicating with outside law enforcement agencies was part of the police chief's job responsibilities. Gibson v. Kilpatrick, 773 F.3d 661, 2014 U.S. App. LEXIS 23330 (5th Cir. Miss. 2014), cert. denied, — U.S. —, 135 S. Ct. 2318, 191 L. Ed. 2d 980, 2015 U.S. LEXIS 3261 (U.S. 2015).

CHAPTER 23.

MUNICIPAL COURTS

Sec.

21-23-7. Powers and duties of municipal judge; mayor serving as municipal judge.
21-23-23. Municipal Court Collections Payment Program; purpose; funding of program.

§ 21-23-7. Powers and duties of municipal judge; mayor serving as municipal judge.

(1) The municipal judge shall hold court in a public building designated by the governing authorities of the municipality, or may hold court in an adult detention center as provided under this subsection, and may hold court every day except Sundays and legal holidays if the business of the municipality so requires; provided, however, the municipal judge may hold court outside the boundaries of the municipality but not more than within a sixty-mile radius of the municipality to handle preliminary matters and criminal matters such as initial appearances and felony preliminary hearings. The municipal judge may hold court outside the boundaries of the municipality but not more than within a one-mile radius of the municipality for any purpose; however, a municipal judge may hold court outside the boundaries of the municipality more than within a one-mile radius of the municipality when accepting a plea of a defendant at an adult detention center within the county. The municipal judge shall have the jurisdiction to hear and determine, without a jury and without a record of the testimony, all cases charging violations of the municipal ordinances and state misdemeanor laws made offenses against the municipality and to punish offenders therefor as may be prescribed by law. Except as

otherwise provided by law, criminal proceedings shall be brought by sworn complaint filed in the municipal court. Such complaint shall state the essential elements of the offense charged and the statute or ordinance relied upon. Such complaint shall not be required to conclude with a general averment that the offense is against the peace and dignity of the state or in violation of the ordinances of the municipality. He may sit as a committing court in all felonies committed within the municipality, and he shall have the power to bind over the accused to the grand jury or to appear before the proper court having jurisdiction to try the same, and to set the amount of bail or refuse bail and commit the accused to jail in cases not bailable. The municipal judge is a conservator of the peace within his municipality. He may conduct preliminary hearings in all violations of the criminal laws of this state occurring within the municipality, and any person arrested for a violation of law within the municipality may be brought before him for initial appearance. The municipal court shall have jurisdiction of any case remanded to it by a circuit court grand jury. The municipal court shall have civil jurisdiction over actions filed pursuant to and as provided in Title 93, Chapter 21, Mississippi Code of 1972, the Protection from Domestic Abuse Act.

(2) In the discretion of the court, where the objects of justice would be more likely met, as an alternative to imposition or payment of fine and/or incarceration, the municipal judge shall have the power to sentence convicted offenders to work on a public service project where the court has established such a program of public service by written guidelines filed with the clerk for public record. Such programs shall provide for reasonable supervision of the offender and the work shall be commensurate with the fine and/or incarceration that would have ordinarily been imposed. Such program of public service may be utilized in the implementation of the provisions of Section 99-19-20, and public service work thereunder may be supervised by persons other than the sheriff.

(3) The municipal judge may solemnize marriages, take oaths, affidavits and acknowledgments, and issue orders, subpoenas, summonses, citations, warrants for search and arrest upon a finding of probable cause, and other such process under seal of the court to any county or municipality, in a criminal case, to be executed by the lawful authority of the county or the municipality of the respondent, and enforce obedience thereto. The absence of a seal shall not invalidate the process.

(4) When a person shall be charged with an offense in municipal court punishable by confinement, the municipal judge, being satisfied that such person is an indigent person and is unable to employ counsel, may, in the discretion of the court, appoint counsel from the membership of The Mississippi Bar residing in his county who shall represent him. Compensation for appointed counsel in criminal cases shall be approved and allowed by the municipal judge and shall be paid by the municipality. The maximum compensation shall not exceed Two Hundred Dollars ($200.00) for any one (1) case. The governing authorities of a municipality may, in their discretion, appoint a public defender(s) who must be a licensed attorney and who shall receive a salary to be fixed by the governing authorities.

(5) The municipal judge of any municipality is hereby authorized to suspend the sentence and to suspend the execution of the sentence, or any part thereof, on such terms as may be imposed by the municipal judge. However, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of two (2) years. The municipal judge shall have the power to establish and operate a probation program, dispute resolution program and other practices or procedures appropriate to the judiciary and designed to aid in the administration of justice. Any such program shall be established by the court with written policies and procedures filed with the clerk of the court for public record. Subsequent to original sentencing, the municipal judge, in misdemeanor cases, is hereby authorized to suspend sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the municipal judge, if (a) the judge or his or her predecessor was authorized to order such suspension when the sentence was originally imposed; and (b) such conviction (i) has not been appealed; or (ii) has been appealed and the appeal has been voluntarily dismissed.

(6) Upon prior notice to the municipal prosecuting attorney and upon a showing in open court of rehabilitation, good conduct for a period of two (2) years since the last conviction in any court and that the best interest of society would be served, the court may, in its discretion, order the record of conviction of a person of any or all misdemeanors in that court expunged, and upon so doing the said person thereafter legally stands as though he had never been convicted of the said misdemeanor(s) and may lawfully so respond to any query of prior convictions. This order of expunction does not apply to the confidential records of law enforcement agencies and has no effect on the driving record of a person maintained under Title 63, Mississippi Code of 1972, or any other provision of said Title 63.

(7) Notwithstanding the provisions of subsection (6) of this section, a person who was convicted in municipal court of a misdemeanor before reaching his twenty-third birthday, excluding conviction for a traffic violation, and who is a first offender, may utilize the provisions of Section 99-19-71, to expunge such misdemeanor conviction.

(8) In the discretion of the court, a plea of nolo contendere may be entered to any charge in municipal court. Upon the entry of a plea of nolo contendere the court shall convict the defendant of the offense charged and shall proceed to sentence the defendant according to law. The judgment of the court shall reflect that the conviction was on a plea of nolo contendere. An appeal may be made from a conviction on a plea of nolo contendere as in other cases.

(9) Upon execution of a sworn complaint charging a misdemeanor, the municipal court may, in its discretion and in lieu of an arrest warrant, issue a citation requiring the appearance of the defendant to answer the charge made against him. On default of appearance, an arrest warrant may be issued for the defendant. The clerk of the court or deputy clerk may issue such citations.

(10) The municipal court shall have the power to make rules for the administration of the court's business, which rules, if any, shall be in writing filed with the clerk of the court and shall include the enactment of rules related

to the court's authority to issue domestic abuse protection orders pursuant to Section 93-21-1 et seq.

(11) The municipal court shall have the power to impose punishment of a fine of not more than One Thousand Dollars ($1,000.00) or six (6) months imprisonment, or both, for contempt of court. The municipal court may have the power to impose reasonable costs of court, not in excess of the following:

Dismissal of any affidavit, complaint or charge in municipal court	$ 50.00
Suspension of a minor's driver's license in lieu of conviction	$ 50.00
Service of scire facias or return "not found"	$ 20.00
Causing search warrant to issue or causing prosecution without reasonable cause or refusing to cooperate after initiating action	$ 100.00
Certified copy of the court record	$ 5.00
Service of arrest warrant for failure to answer citation or traffic summons	$ 25.00
Jail cost per day — actual jail cost paid by the municipality but not to exceed	$ 35.00
Service of court documents related to the filing of a petition or issuance of a protection from domestic abuse order under Title 93, Chapter 21, Mississippi Code of 1972	$ 25.00
Any other item of court cost	$ 50.00

No filing fee or such cost shall be imposed for the bringing of an action in municipal court.

(12) A municipal court judge shall not dismiss a criminal case but may transfer the case to the justice court of the county if the municipal court judge is prohibited from presiding over the case by the Canons of Judicial Conduct and provided that venue and jurisdiction are proper in the justice court. Upon transfer of any such case, the municipal court judge shall give the municipal court clerk a written order to transmit the affidavit or complaint and all other records and evidence in the court's possession to the justice court by certified mail or to instruct the arresting officer to deliver such documents and records to the justice court. There shall be no court costs charged for the transfer of the case to the justice court.

(13) A municipal court judge shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped, there was no disposition of such case or the person was found not guilty at trial.

HISTORY: Codes, 1892, § 3001; 1906, §§ 3398, 3399; Hemingway's 1917, §§ 5926-5929; 1930, §§ 2535-2537; 1942, §§ 3374-103, 3374-104; Laws, 1910, ch. 169; Laws, 1936, ch. 276; Laws, 1950, ch. 491, §§ 103, 104; Laws, 1958, ch. 517, §§ 1, 2; Laws, 1960, ch. 424; Laws, 1976, ch. 312; Laws, 1979, ch. 401, § 4; Laws, 1987, ch. 380, § 1; Laws, 1988, ch. 564, § 1; Laws, 1991, ch. 322, § 1; Laws, 1996, ch. 454, § 1; Laws, 1997, ch. 417, § 1; Laws, 2000, ch. 619, § 1; Laws, 2007, ch. 495, § 3; Laws, 2009, ch. 374, § 2; Laws, 2009, ch. 545, § 8; Laws, 2013, ch. 358, § 1; Laws, 2017, ch. 399, § 4, eff from and after July 1, 2017; Laws, 2019, ch. 466, § 39,

eff from and after July 1, 2019; Laws, 2020, ch. 368, § 1, eff from and after July 1, 2020.

Editor's Note — Laws of 2019, ch. 466, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2017 amendment added the second sentence of (1).

The 2019 amendment added "or the person was found not guilty at trial" at the end of (13), and made a related change.

The 2020 amendment, in (1), inserted "or may hold court in an adult detention center as provided under this subsection" in the first sentence, and added "however, a municipal judge...at an adult detention center within the county" at the end of the second sentence.

Cross References — Provision whereby person who has been convicted of a misdemeanor, and who is first offender, may petition the court to have his record expunged, see § 99-19-71.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

Officer was sworn in by a justice court judge to fulfill the duties of a justice court deputy clerk in June 2015, and he was acting as a de facto officer and possessed the requisite authority to administer the oath and swear to the charging affidavit; therefore, any defects that may have existed in the appointment of the officer did not negate that he was acting under the color of appointment at the time he issued defendant's affidavit. Oliver v. State, — So. 3d —, 2019 Miss. App. LEXIS 18 (Miss. Ct. App. Jan. 15, 2019).

Citation issued to defendant was a valid affidavit, and therefore its filing in the justice court gave the circuit court jurisdiction over defendant's case. Oliver v. State, — So. 3d —, 2019 Miss. App. LEXIS 18 (Miss. Ct. App. Jan. 15, 2019).

§ 21-23-23. Municipal Court Collections Payment Program; purpose; funding of program.

(1) The Department of Revenue shall administer the Municipal Court Collections Payment Program. The purpose of the program shall be to provide support for salaries of municipal court personnel, for the purchase, operation and maintenance of software and equipment, for facility planning and improvement, and for other expenses incurred for the purpose of collecting fines and assessments within the municipal court system. Monies appropriated by the Legislature to the Department of Revenue for the purposes of funding the Municipal Court Collections Payment Program shall be expended by the department to each participating municipality based upon that municipality's deposits in the Treasury of the monies received under the provisions of Section 99-19-73.

(2) The Department of Revenue shall promulgate rules and procedures relating to the disbursement of monies to participating municipalities. The department shall promulgate rules and procedures to ensure that the municipal court system of a participating municipality practices proper and effective collection procedures for the collection of fines and other assessments. If a municipality uses its own employees to collect delinquent fines and other

assessments owed to the municipality, then it may use monies from the fund to defray the costs associated with these collection actions. In addition, the governing authority of a participating municipality shall contract with a private attorney or private collection agent or agency to collect delinquent criminal fines and other assessments as provided in Section 21-17-1(6) in order to qualify.

HISTORY: Laws, 2014, ch. 512, § 2; Laws, 2017, 1st Ex Sess, ch. 7, § 9, eff from and after passage (approved June 23, 2017.).

Amendment Notes — The 2017 amendment, effective June 23, 2017, rewrote the section by deleting all references to "Municipal Court Collections Fund" and "fund," the source of monies in the fund, and the maximum amount municipalities could receive from the fund, and by adding all references to the "Municipal Court Collections Payment Program" and "program," and providing that monies "appropriated by the Legislature to the Department of Revenue for the purposes of funding the Municipal Court Collections Payment Program shall be expended by the department to each participating municipality based upon that municipality's deposits in the Treasury of the monies received under the provisions of Section 99-19-73."

CHAPTER 27.

PUBLIC UTILITIES AND TRANSPORTATION

Municipally Owned Utilities. 21-27-11
Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1992. 21-27-201

MUNICIPALLY OWNED UTILITIES

Sec.
21-27-23. General powers of municipality as to creation, maintenance, and operation of public utility systems.
21-27-75. Authority to enter into interlocal agreement with rural water associations operating within corporate limits of municipality that requires associations to terminate water service of certain customers; agreement requirements.

§ 21-27-13. Establishment of public utility commission; qualifications, appointment, terms of office, powers and duties, compensation and bonds of commissioners; exercise of powers when commission not established.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

In a pedestrian's action to recover for injuries she sustained from a fall after she stepped into a sunken utility box set into a sidewalk, the trial court properly granted a utilities commission summary judgment because the pedestrian released it when she executed a settlement agreement with the city; the pedestrian knew when she filed her complaint, and even before then,

the commission was a municipal commission. Hathorn v. Louisville Utils. Comm'n, 233 So. 3d 273, 2017 Miss. LEXIS 403 (Miss. 2017).

§ 21-27-17. Powers and duties of commission.

JUDICIAL DECISIONS

ANALYSIS

2. Political subdivision.
3. Contract claims.

2. Political subdivision.

When a developer sued a city, the city's public utilities commission, and a utilities department (department) for damage to the developer's property in installing utility lines, the department was a "political subdivision" because (1) the department was an arm of the public utilities commission, (2) the department was responsible for governmental activities, and (3) whether the department was engaged in proprietary activities was irrelevant. Kelley v. Corinth PUC, 200 So. 3d 1107, 2016 Miss. App. LEXIS 36 (Miss. Ct. App.), cert. denied, — So. 3d —, 2016 Miss. LEXIS 393 (Miss. 2016), cert. denied, 203 So. 3d 598, 2016 Miss. LEXIS 394 (Miss. 2016), cert. denied, 203 So. 3d 599, 2016 Miss. LEXIS 403 (Miss. 2016).

3. Contract claims.

When a developer sued a city, the city's public utilities commission, and a utilities department (department) for damage to the developer's property in installing utility lines, the developer's contract claim failed because (1) no breach of a provision of a written contract was alleged, (2) no oral agreement allegedly breached was reflected in the minutes of a governmental body, and (3) a claim based on a breach of a contractual duty not to commit negligence was a tort claim. Kelley v. Corinth PUC, 200 So. 3d 1107, 2016 Miss. App. LEXIS 36 (Miss. Ct. App.), cert. denied, — So. 3d —, 2016 Miss. LEXIS 393 (Miss. 2016), cert. denied, 203 So. 3d 598, 2016 Miss. LEXIS 394 (Miss. 2016), cert. denied, 203 So. 3d 599, 2016 Miss. LEXIS 403 (Miss. 2016).

§ 21-27-23. General powers of municipality as to creation, maintenance, and operation of public utility systems.

Any municipality may:

(a) Borrow money and issue revenue bonds therefor solely for the purposes specified in this section and by the procedure provided in Sections 21-27-41 through 21-27-69.

Money may be borrowed and bonds issued by any municipality of the State of Mississippi, as defined in Section 21-27-11, to acquire or improve any waterworks system, water supply system, sewerage system, sewage disposal system, garbage disposal system, rubbish disposal system or incinerators, gas producing system, gas generating system, gas transmission system, or gas distribution system, electric generating, transmission or distribution system, railroad transportation system for passengers and freight, or motor vehicle transportation system, including any combination of any or all of those systems into one (1) system, within or without the corporate limits thereof, for the purpose of supplying the municipality and the persons and corporations, both public and private, whether within or without its corporate limits, with the services and facilities afforded by the system, provided that water, electric energy, or gas afforded by any system or

systems may be supplied to such ultimate consumers thereof by sale thereof to the owners or operators of a distribution system for resale to the public. Any municipality which shall borrow money and issue revenue bonds to provide funds with which to acquire a gas transmission system, if necessary in order to reach and obtain a source of supply of gas for the municipality, may extend or construct its gas transmission line into an adjoining state, and may use and expend part of the proceeds of such issue of revenue bonds for the purpose.

(b) To assume all indebtedness for any system or systems which may be acquired under the provisions of this section as all or part of the consideration for the acquisition of such system or systems and to issue its revenue bonds in exchange for the bonds or notes evidencing the indebtedness.

(c) To acquire or improve any system which it is authorized to borrow money and issue revenue bonds under subsection (a) of this section to acquire or improve; and to make contracts in furtherance thereof or in connection therewith.

(d) To own, operate and maintain any such system or combination of any and all of said systems into one (1) system.

(e) To establish, maintain and collect rates for the facilities and services offered by any such system; provided that if there is a combination of systems into one or more systems, the municipality establishing the same shall be and is empowered to establish, maintain and collect rates for any and all of the services or for any combination thereof, and the municipality may discontinue any or all of the services upon any failure to promptly pay the charges fixed for the services. The rates so fixed for services rendered by any system or combination thereof may be charged for all services rendered thereby, regardless of whether the services may have been previously rendered without rates or charges therefor by the previously existing waterworks system, water supply system, sewerage system, sewage disposal system, garbage disposal system, rubbish disposal system or incinerators, gas producing system, gas generating system, gas transmission system, or gas distribution system, electric generating, transmission or distribution system, which shall have been merged into the combined system. Any such municipality may pledge for the payment of any bonds issued to acquire or improve any such combined system, or to refund any bonds previously issued to acquire or improve any such combined system or to acquire or improve any system merged with such combined system, the revenues to be derived from the operation of such combined system, including the charges authorized to be imposed by this section.

A municipality may authorize a municipally owned utility to make early payment of the utility's bills to its electricity suppliers which offer early payment discounts to the municipally owned utility. The municipality may immediately refund to a customer of the municipally owned utility his or her deposit for municipal utility services after the municipal utility has determined that payment for all services and any other obligations which the customer may have incurred in regard to the municipal utility has been made.

If the revenues of any previously existing system being merged into a combined system are subject to a prior lien, the revenues and the expenses of any previously existing system shall be accounted for separately to the extent necessary to satisfy the covenants relating to the prior lien for so long as the indebtedness secured by the revenues shall remain outstanding. Only surplus revenues remaining after the satisfaction of all covenants relating to the outstanding indebtedness may be pledged to the retirement of any indebtedness to be secured by the revenues of a combined system. The existence of the outstanding indebtedness shall not, in and of itself, prevent the combining of systems as herein provided, so long as the prior lien on the revenues of any previously existing system is fully satisfied from the revenues of the previously existing system.

(f) To acquire property, real or personal, which may be necessary to effectuate the powers conferred by this section. The municipality may purchase electric transmission line materials, electric distribution system substation equipment, transformer equipment, and all other appliances, apparatus, machinery, equipment and appurtenances necessary for the sale of electricity, such as utility vehicles and fencing, from the surplus inventory of the Tennessee Valley Authority or any other similar agency of the federal government and electric power associations. These purchases by the municipality shall be exempt from the public bid requirements prescribed in Sections 31-7-12 and 31-7-13. If the power of eminent domain is exercised, it shall be exercised in the manner provided by Sections 11-27-1 through 11-27-51.

(g) To enter into contract with the United States of America or any agency thereof, under the provisions of acts of the Congress of the United States, to aid or encourage public works and the regulations made in pursuance thereof, for the sale of bonds issued in accordance with the provisions of Sections 21-27-41 through 21-27-69 or for the acceptance of a grant to aid such municipality in acquiring or improving any such system; and the contracts may contain terms and conditions as may be agreed upon by and between the municipality and the United States of America or any agency thereof, or any purchaser of the bonds.

(h) To adopt the ordinances and resolutions and to do all things and perform all acts necessary, proper or desirable to effectuate the full intent and purpose of Sections 21-27-11 through 21-27-69, including processing, marketing, custom processing, sale and resale of materials processed through any facility under its jurisdiction.

(i) To borrow from the Mississippi Development Bank in order to fund the advance purchase of energy for its gas producing, generating, transmission or distribution system or its electric generating, transmission or distribution system.

(j) Enter into an interlocal agreement in accordance with Section 21-27-75.

HISTORY: Codes, 1942, § 3519-08; Laws, 1934, ch. 317; Laws, 1936, ch. 186; Laws, 1942, ch. 231; Laws, 1950, ch. 494, § 8; Laws, 1962, chs. 551, 552; Laws, 1973, ch. 389, § 1; Laws, 1980, ch. 451; Laws, 1982, ch. 368, § 1; Laws, 1987, ch. 502, § 3; Laws, 1994, ch. 547, § 3; Laws, 1997, ch. 498, § 2; Laws, 1998, ch. 418, § 2; Laws, 1999, ch. 347, § 3; Laws, 1999, ch. 520, § 3, eff from and after July 1, 1999; Laws, 2018, ch. 330, § 2, eff from and after passage (approved March 8, 2018).

Amendment Notes — The 2018 amendment, effective March 8, 2018, added (j).

§ 21-27-75. Authority to enter into interlocal agreement with rural water associations operating within corporate limits of municipality that requires associations to terminate water service of certain customers; agreement requirements.

(1) The governing authorities of a municipality are authorized and empowered, in their discretion, to enter into an interlocal agreement with a rural water association operating within the corporate limits of the municipality that requires the association to terminate the water service of any of its customers who are thirty (30) days or more delinquent in the payment of charges for sewer services provided by the municipality.

(2) Any agreement entered into under this section shall at a minimum:

(a) Require the municipality to notify the association of any customer of the association who also has sewer service provided by the municipality who is thirty (30) days or more delinquent in the payment of sewer charges by a method agreeable to the municipality and the association;

(b) Provide that upon receipt of a notification the association shall terminate the water service of the named customer;

(c) Provide that upon satisfaction of the delinquency and any fees connected with the delinquency and the termination of water service, the association shall restart the water service of the customer;

(d) Provide that the municipality shall save and hold harmless the association against any and all claims based on the disconnection of water or sewer service and any other damages resulting from any action taken by the association under an interlocal agreement entered into under this section.

(3) Upon entering into an interlocal agreement under this section, the association is authorized to terminate the water service of any customer delinquent in the payment of sewer charges to the municipality pursuant to the terms of the interlocal agreement.

HISTORY: Laws, 2018, ch. 330, § 1, eff from and after passage (approved March 8, 2018).

METROPOLITAN AREA WASTE DISPOSAL

§ 21-27-189. Other powers and authority of municipality.

JUDICIAL DECISIONS

ANALYSIS

1. Interpretation.
2. Ministerial function.

1. Interpretation.

Duty to maintain a sewage system is not imposed by law upon municipalities; the language of the statute explicitly leaves it to the discretion of municipalities whether and how to maintain their sewage systems, if any, and accordingly, sewage maintenance, as a general function, is discretionary. Boroujerdi v. City of Starkville, 158 So. 3d 1106, 2015 Miss. LEXIS 84 (Miss. 2015).

It would be patently unfair to affirm summary judgment in the city's favor without the property owner having an opportunity to attempt to conform his complaint and proof to the current approach to discretionary function immunity; municipal sewage maintenance generally is a discretionary function, but several narrower functions and duties associated with sewage maintenance are mandated by statute or regulation and thus are ministerial and removed from discretionary function immunity. Boroujerdi v. City of Starkville, 158 So. 3d 1106, 2015 Miss. LEXIS 84 (Miss. 2015).

2. Ministerial function.

Several functions and duties involved in sewage maintenance and operation are ministerial, and if a plaintiff can show that his or her injuries were caused by the government's act or failure to act in furtherance of one or more of such ministerial functions, that plaintiff can proceed with his or her claim. Boroujerdi v. City of Starkville, 158 So. 3d 1106, 2015 Miss. LEXIS 84 (Miss. 2015).

Function of maintaining a sewage system to maintain compliance with the Water Pollution Control Act Act is a ministerial function that is set within the larger discretionary function of general sewage creation and maintenance; the federal government sets the standards, and, although the states have some discretion with respect to how they will meet those standards, they have no choice but to comply. Boroujerdi v. City of Starkville, 158 So. 3d 1106, 2015 Miss. LEXIS 84 (Miss. 2015).

MUNICIPAL AND DOMESTIC WATER AND WASTEWATER SYSTEM OPERATOR'S CERTIFICATION ACT OF 1992

Sec.
21-27-207. Regulatory authority of Mississippi State Board of Health and Mississippi Commission on Natural Resources.

§ 21-27-207. Regulatory authority of Mississippi State Board of Health and Mississippi Commission on Natural Resources.

Both the board and commission may adopt, modify, repeal and promulgate, after due notice and hearing, and may make exceptions to and grant exemptions and variances from and may enforce those rules, regulations and procedures as are necessary or appropriate to effectuate the duties and responsibilities of these agencies arising under Sections 21-27-201 through 21-27-221. The rules, regulations and procedures shall include, but not be

limited to, the following: criteria for classifying municipal and domestic community water systems, nontransient, noncommunity water systems and wastewater facilities; qualifications for operators of community water systems, nontransient, noncommunity water systems and wastewater facilities; certification of operators of commercial Class I rubbish sites; procedures for examining or testing applicants for operator certificates; procedures and fees for issuing, reissuing, modifying, revoking or terminating operator certificates; and reciprocal certification of operators certified in other states having certification requirements not less stringent than those established by the board and commission. Any increase in the fees charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

HISTORY: Laws, 1986, ch. 354, § 4; Laws, 1997, ch. 478, § 3; Laws, 2004, ch. 466, § 3; Laws, 2016, ch. 510, § 2, eff from and after July 1, 2016; reenacted without change, Laws 2020, ch. 473, § 1, eff from and after July 1, 2020.

Editor's Notes — Laws of 2016, ch. 510, § 65, which was the repealer for this section, effective July 1, 2020, was repealed by Laws of 2020, ch. 473, § 65, effective July 1, 2020.

Amendment Notes — The 2016 amendment added the last sentence of the section. The 2020 amendment reenacted the section without change.

CHAPTER 29.

EMPLOYEES' RETIREMENT AND DISABILITY SYSTEMS

Article 7. Miscellaneous Provisions. 21-29-301

ARTICLE 7.

MISCELLANEOUS PROVISIONS.

Sec.
21-29-325. Payment of retirement benefits by the most appropriate means as determined by the board.

§ 21-29-325. Payment of retirement benefits by the most appropriate means as determined by the board.

The Public Employees' Retirement System shall make payments of retirement benefits under this chapter to members and to the beneficiaries of those members, by whatever means the board prescribes by regulation to be the most appropriate for the proper and efficient payment of benefits, including, but not limited to, direct deposit to an account with a financial institution that is a participant of the Automated Clearing House designated by the member or beneficiary. The board may provide for alternative means of payment if the member or beneficiary can demonstrate that payment by the prescribed means will cause the member or beneficiary undue hardship.

HISTORY: Laws, 2002, ch. 627, § 4; Laws, 2016, ch. 397, § 9, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment divided the former section into two sentences by substituting "beneficiary. The board may provide for alternative means of payment if the member" for "beneficiary, unless the member"; in the first sentence, deleted "who retire effective on or after January 1, 2003" following "this chapter to members," inserted "whatever" preceding "means" and "the board...efficient payment" thereafter, and inserted "benefits, including, but not limited to"; and in the second sentence, substituted "payment by the prescribed means will cause" for "payment by means of direct deposit will cause."

CHAPTER 31.

CIVIL SERVICE

GENERAL PROVISIONS

§ 21-31-1. Adoption of civil service system mandated in certain municipalities.

JUDICIAL DECISIONS

1. In general.

Because a city did not have a civil service commission, it did not fall within the purview of the civil service laws. Collins v. City of Newton, 240 So. 3d 1211, 2018 Miss. LEXIS 123 (Miss. 2018).

§ 21-31-13. Coverage afforded by civil service system.

JUDICIAL DECISIONS

2. Due process.

Police officer received sufficient due process in disciplinary proceedings because, while the officer had a property interest in the officer's employment, the officer was given notice at every stage of the proceedings, including of (1) a pre-termination hearing, (2) a city council meeting at which the officer's termination was recommended, and (3) a hearing before the civil service commission where the officer was represented by an attorney. Bates v. City of Natchez, 247 So. 3d 338, 2018 Miss. App. LEXIS 232 (Miss. Ct. App. 2018).

§ 21-31-21. Tenure of office and grounds for discipline.

JUDICIAL DECISIONS

2. Illustrative cases.

Police chief had substantial evidence to be concerned that a police officer had been conducting quasi-police investigations while off-duty and intoxicated. Although the officer was correct that there was no evidence that he was intoxicated on the night in question, the lack of evidence was based almost entirely on the fact that the officer avoided all of the police chief's attempts to resolve the question. Renfro v. City of Moss Point, 156 So. 3d 913, 2014 Miss. App. LEXIS 432 (Miss. Ct. App. 2014), cert. denied, 154 So. 3d 33, 2015 Miss. LEXIS 61 (Miss. 2015).

In a case in which a police officer appealed his termination for insubordination, the police chief had substantial rea-

son to suspect that the officer had been conducting quasi-police surveillance while off-duty and intoxicated. There was evidence that the officer avoided the chief's attempts to confirm his suspicion, as well as evidence that the officer was insubordinate in that the officer was argumentative, adversarial, and combative regarding another officer's attempts to administer a portable breath test and ask questions on the chief's behalf. Renfro v. City of Moss Point, 156 So. 3d 913, 2014 Miss. App. LEXIS 432 (Miss. Ct. App. 2014), cert. denied, 154 So. 3d 33, 2015 Miss. LEXIS 61 (Miss. 2015).

§ 21-31-23. Removal, suspension, demotion, and discharge.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
4. Judicial review.
5. Standard and scope of review.
6. Termination notice.

1. In general.

Because the Civil Service Commission's order upholding the lieutenant's suspension failed to set forth any written findings to support its decision as required by this section and caselaw, the court reversed the circuit court's judgment affirming the Commission's decision and remanded the case to the Commission for further proceedings. Banks v. City of Jackson, 295 So. 3d 571, 2020 Miss. App. LEXIS 138 (Miss. Ct. App. 2020).

City's personnel handbook afforded proper guidance in imposing sanctions, and substantial evidence supported the durations of the concurrently running suspensions imposed on a police officer because providing a detailed description of behavior warranting discipline and setting forth a progressive list of available sanctions, the city's personnel handbook provides sufficient guidelines for the city to perform its disciplinary function. Howard v. City of Columbus, 289 So. 3d 755, 2020 Miss. App. LEXIS 6 (Miss. Ct. App. 2020).

Civil Service Commission complied with the statute and confined its investigation into the officer's termination for whether the city's disciplinary action was not made for political or religious reasons and in good faith for cause; the officer explained that he used force against an individual being arrested to try to prevent his escape and the police chief testified about the specific policies that the officer violated. The Commission upheld the termination with specific findings that were supported by substantial evidence. Roberts v. City of Jackson, — So. 3d —, 2020 Miss. App. LEXIS 598 (Miss. Ct. App. Oct. 27, 2020).

Sheriff's department claimed that the officer violated policy by being off-duty, having his minor child in his vehicle, and interacting with a citizen based on a minor traffic violation; while the officer was not the exact officer who arrested the citizen, he pursued her, flashed his badge at her, and directed her, and this evidence supported the decision to find the department terminated the officer in good faith. Chavis v. Jackson Cty. Sheriff's Dep't, 291 So. 3d 355, 2019 Miss. App. LEXIS 207 (Miss. Ct. App. 2019), cert. denied, 290 So. 3d 753, 2020 Miss. LEXIS 101 (Miss. 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 181 (Miss. 2020).

Officer was not denied proper due process, as he was afforded the opportunity to appeal his termination to the civil service commission for a full hearing, which he exercised and received, and at the hearing, he put on evidence and was able to rebut the charges against him. Chavis v. Jackson Cty. Sheriff's Dep't, 291 So. 3d 355, 2019 Miss. App. LEXIS 207 (Miss. Ct. App. 2019), cert. denied, 290 So. 3d 753, 2020 Miss. LEXIS 101 (Miss. 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 181 (Miss. 2020).

Officer was terminated without a pre-termination hearing, but he was given a written notice of the specific reasons for his termination within 24 hours and was given instructions on how to receive a post-termination hearing, which he exer-

cised; thus, his claim that the circuit court erred in finding that the sheriff department's failure to provide him with a pretermination hearing did not violate his rights had no merit. Chavis v. Jackson Cty. Sheriff's Dep't, 291 So. 3d 355, 2019 Miss. App. LEXIS 207 (Miss. Ct. App. 2019), cert. denied, 290 So. 3d 753, 2020 Miss. LEXIS 101 (Miss. 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 181 (Miss. 2020).

Because a city did not have a civil service commission, it did not fall within the purview of the civil service laws. Collins v. City of Newton, 240 So. 3d 1211, 2018 Miss. LEXIS 123 (Miss. 2018).

Termination of deputy sheriff and the denial of the deputy sheriff's request for reinstatement was not arbitrary or capricious and was supported by substantial evidence because there was credible evidence that the deputy sheriff left the State of Mississippi in the midst of an emergency situation after a hurricane made landfall without first obtaining permission from an appropriate person in the sheriff's department. This offense subjected the deputy sheriff to termination under the rules of the sheriff's department. Phillips v. Hancock County Sheriff's Dep't, 203 So. 3d 622, 2016 Miss. App. LEXIS 585 (Miss. Ct. App. 2016).

4. Judicial review.

Substantial evidence supported a former police officer's dismissal because the officer's third at-fault accident in five years resulting in property damage over $10,000 required dismissal under the Columbus, Miss., "Guidelines for Chargeable Accidents Within A Five Year Period." Conwill v. City of Columbus, 2020 Miss. App. LEXIS 62 (March 3, 2020).

Police officer, who was terminated from the officer's position with a city's police department upon a finding of good cause, was not denied due process in the disciplinary process because the officer was given written notice of the intended termination, reasons for the termination, and an opportunity to respond. Moreover, the officer was allowed to file an appeal with the city's civil service commission after the disciplinary action was taken. Weeks v. City of Biloxi, 220 So. 3d 266, 2017 Miss. App. LEXIS 294 (Miss. Ct. App. 2017).

5. Standard and scope of review.

City civil service commission's decision to affirm the city's order suspending a police officer without pay was made in good faith and for cause, and substantial evidence supported the commission's decision to do so, because the officer admitted that she did not have permission to leave her assigned beat and that the language she used with an arrestee was a violation of the general orders and the procedures of the police department. Howard v. City of Columbus, 289 So. 3d 755, 2020 Miss. App. LEXIS 6 (Miss. Ct. App. 2020).

Substantial evidence supported a civil service commission's decision to suspend and demote a police officer because the evidence showed the officer (1) violated city policies on the personal use of city assets and use of city vehicles, and (2) created an atmosphere of distrust among fellow officers and damaged department morale. Bates v. City of Natchez, 247 So. 3d 338, 2018 Miss. App. LEXIS 232 (Miss. Ct. App. 2018).

6. Termination notice.

Mayor did not violate the civil service law because, although a police officer was given a termination notice that was not signed by the mayor, there was evidence at the civil service hearing, credited by the civil service commission, that the police chief had both the authority from and confirmation of his actions by the mayor. City of Meridian v. Meadors, 222 So. 3d 1045, 2016 Miss. App. LEXIS 783 (Miss. Ct. App. 2016), cert. denied, 222 So. 3d 312, 2017 Miss. LEXIS 288 (Miss. 2017).

CHAPTER 33.

TAXATION AND FINANCE

Article 1. Taxation. 21-33-1
Article 5. Bonds. 21-33-301
Article 9. Special Local Improvement Districts. 21-33-501

ARTICLE 1.

TAXATION.

§ 21-33-39. Appeals of equalizations and assessments.

HISTORY: Codes, 1942, § 3742-17; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 17, eff from and after July 1, 1950; brought forward without change, Laws, 2018, ch. 431, § 2, eff from and after July 1, 2018.

Editor's Notes — This section was brought forward without change by Laws of 2018, ch. 431, § 2, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2018 amendment brought the section forward without change.

§ 21-33-53. Duties of tax collector.

JUDICIAL DECISIONS

1. Municipal tax collectors.

Provision of liability in Miss. Code Ann. § 27-41-79 for a tax collector who fails to properly file the tax-sale list is applicable to municipal tax collectors in addition to those duties imposed by Miss. Code Ann. § 21-33-63; the liability provision applies to municipal tax collectors because Miss. Code Ann. § 27-41-5 states that the provisions of Chapter 41 shall apply to all municipalities in the State of Mississippi, and Miss. Code Ann. § 21-33-53 prescribes the duties of the tax collector. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265, 2014 Miss. LEXIS 582 (Miss. 2014).

§ 21-33-63. Sale for taxes; sale list.

JUDICIAL DECISIONS

1. Municipal tax collectors.

Provision of liability in Miss. Code Ann. § 27-41-79 for a tax collector who fails to properly file the tax-sale list is applicable to municipal tax collectors in addition to those duties imposed by Miss. Code Ann. § 21-33-63; the liability provision applies to municipal tax collectors because Miss. Code Ann. § 27-41-5 states that the provisions of Chapter 41 shall apply to all municipalities in the State of Mississippi, and Miss. Code Ann. § 21-33-53 prescribes the duties of the tax collector. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265, 2014 Miss. LEXIS 582 (Miss. 2014).

§ 21-33-83. Appeals.

HISTORY: Codes, 1942, § 3742-43; Laws, 1938, Ex. Sess., ch. 70; Laws, 1950, ch. 492, § 43, eff from and after July 1, 1950; brought forward without change, Laws, 2018, ch. 431, § 3, eff from and after July 1, 2018.

Editor's Notes — This section was brought forward without change by Laws of 2018, ch. 431, § 3, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2018 amendment brought the section forward without change.

ARTICLE 5.

BONDS.

Sec.
21-33-303. Limitation of indebtedness.

§ 21-33-303. Limitation of indebtedness.

No municipality shall hereafter issue bonds secured by a pledge of its full faith and credit for the purposes authorized by law in an amount which, when added to the then outstanding bonded indebtedness of such municipality, shall exceed either (a) fifteen percent (15%) of the assessed value of the taxable property within such municipality, according to the last completed assessment for taxation, or (b) ten percent (10%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. In computing such indebtedness, there may be deducted all bonds or other evidences of indebtedness, heretofore or hereafter issued, for school, water, sewerage systems, gas, and light and power purposes and for the construction of special improvements primarily chargeable to the property benefited, or for the purpose of paying the municipality's proportion of any betterment program, a portion of which is primarily chargeable to the property benefited. However, in no case shall any municipality contract any indebtedness which, when added to all of the outstanding general obligation indebtedness, both bonded and floating, shall exceed either (a) twenty percent (20%) of the assessed value of all taxable property within such municipality according to the last completed assessment for taxation or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. Nothing herein contained shall be construed to apply to contract obligations in any form heretofore or hereafter incurred by any municipality which are subject to annual appropriations therefor, or to bonds heretofore issued by any municipality for school purposes, or to contract obligations in any form heretofore or hereafter incurred by any municipality which are payable exclusively from the revenues of any municipally owned utility, or to bonds issued by any municipality under the provisions of Sections 57-1-1 through 57-1-51, or to any special assessment improvement bonds

issued by any municipality under the provisions of Sections 21-41-1 through 21-41-53, or to any indebtedness incurred under Section 55-23-8, or to any indebtedness incurred through a loan to a municipality under Section 57-75-11(tt) in connection with a project defined in Section 57-75-5(f)(xxvii).

All bonds issued prior to July 1, 1990, pursuant to this chapter by any municipality for the purpose of the constructing, replacing, renovating or improving wastewater collection and treatment facilities in order to comply with an administrative order of the Mississippi Department of Natural Resources issued pursuant to the Federal Water Pollution Control Act and amendments thereto, are hereby exempt from the limitation imposed by this section if the governing body of the municipality adopts an order, resolution or ordinance to the effect that the rates paid by the users of such facilities shall be increased to the extent necessary to provide sufficient funds for the payment of the principal of and interest on such bonds as each respectively becomes due and payable as well as the necessary expenses in connection with the operation and maintenance of such facilities.

HISTORY: Codes, Hemingway's 1917, §§ 5969, 5971; Hemingway's 1921 Supp. § 6069p; 1930, §§ 2484, 2485; 1942 § 3598-02; Laws, 1914, ch. 147; Laws, 1920, ch. 169; Laws, 1932, ch. 235; Laws, 1950, ch. 493, § 2; Laws, 1955, Ex. Sess., ch. 96; Laws, 1962, ch. 555; Laws, 1982, ch. 347, § 2; Laws, 1985, ch. 476, § 2; Laws, 1987, ch. 424, § 2; Laws, 1989, ch. 516, § 1; Laws, 1989, ch. 499, § 1; Laws, 1992, ch. 499 § 1; Laws, 1995, ch. 526, § 2; Laws, 1996, ch. 401, § 1; Laws, 2001, ch. 602, § 12, eff from and after passage (approved Apr. 16, 2001); Laws, 2020, ch. 481, § 1, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, added "or to any indebtedness incurred...Section 57-75-5(f)(xxvii)" at the end of the first paragraph.

§ 21-33-326. Borrowing in anticipation of confirmed federal grants or loans.

Cross References — Maximum interest rate on interim financing in anticipation of a confirmed grant or loan described in this section and § 19-9-28, see § 75-17-107.

ARTICLE 9.

SPECIAL LOCAL IMPROVEMENT DISTRICTS.

Special Local Improvement Assessment Districts. 21-33-551

SPECIAL LOCAL IMPROVEMENT ASSESSMENT DISTRICTS

Sec.

21-33-551. Definitions.
21-33-553. Creation of special local improvement assessment districts under certain circumstances; procedure for establishment of districts.
21-33-555. Powers of homeowners' associations representing property in special local improvement assessment districts; dissolution of districts.

Sec.
21-33-557. Use of proceeds of special assessments levied on real property located in districts.
21-33-559. Acceptance and expenditure of contributions from other sources.
21-33-561. Assessment of taxable property falling under more than one homeowners' association.

§ 21-33-551. Definitions.

For the purposes of Sections 21-33-551 through 21-33-561, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Homeowners' Association" means a homeowners' association duly organized as a nonprofit organization with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) "Local improvements" means (i) any improvements constructed within a special local improvement assessment district or services established under Sections 21-33-551 through 21-33-561 to improve the appearance or functioning of property located within the district including, but not limited to, parks and related facilities, sidewalks, streets, street curbing, street medians, planting areas, walls, lighting equipment, fountains and flagpoles; (ii) trees, shrubs, flowers and other vegetation; (iii) security enhancements including, but not limited to, cameras, radios, monitors and related equipment; (iv) private patrol services; (v) the acquisition, rehabilitation and sale of property in a special local improvement assessment district; and (vi) any expenditures made in conjunction with the improvements set forth above such as the removal and relocation of utility service or purchase and removal of signs.

(c) "Municipality" means any municipality incorporated under the laws of the state with a population of one hundred fifty thousand (150,000) or more according to the 2010 federal decennial census.

(d) "Special local improvement assessment district" or "district" means a district established pursuant to Section 21-33-553 and may be comprised of either residential or nonresidential real property. Nonresidential real property located within or immediately adjacent to a special local improvement assessment district comprised of residential real property may be included within such special local improvement assessment district by a request submitted in writing by the owner of such nonresidential property to the governing authorities of the municipality. Residential real estate property located within or immediately adjacent to a special local improvement assessment district comprised of nonresidential real property may be included within such special local improvement assessment district by a request submitted in writing by the owner of such residential property to the governing authorities of the municipality.

(e) "State" means the State of Mississippi.

HISTORY: Laws, 2019, ch. 437, § 1, eff from and after July 1, 2019.

§ 21-33-553. Creation of special local improvement assessment districts under certain circumstances; procedure for establishment of districts.

(1) A special local improvement assessment district may be created under this section if the boundaries of the proposed special local improvement assessment district are within the boundaries of the homeowners' association representing that area. Upon delivery of a petition to the clerk of the municipality in which the proposed district is located, signed by the owners of at least sixty percent (60%) of the taxable real property in the homeowners' association representing the area in the proposed district, the municipality shall begin efforts to establish the district; however, if the boundaries of the proposed special local improvement assessment district are located, in whole or in part, within the boundaries of the Capitol Complex Improvement District, or a portion of the proposed district adjoins the boundaries of the Capitol Complex Improvement District, the petition may be delivered to the Capitol Complex Improvement District Project Advisory Committee, and the committee shall deliver the petition to the clerk of the municipality.

(2) The homeowners' association representing the property owners in the proposed special local improvement assessment district shall submit a strategic plan to the municipality specifying the local improvements proposed for the district during the municipality's upcoming fiscal year and the total amount proposed to be expended for the improvements. Based on the strategic plan, the governing authorities of the municipality shall determine the additional millage to be levied upon all taxable real property in the district, not to exceed six (6) mills, needed in order to provide funds for the local improvements as proposed in the strategic plan.

(3) Within ninety (90) days of receipt of the strategic plan, the municipality shall prepare a notice calling for an election to be held in the proposed district on the question of whether to establish the special local improvement assessment district. The date and time of the election and the voting location shall be fixed in the notice. The municipality shall publish the notice of the election once each week for at least three (3) consecutive weeks in a newspaper published or having a general circulation in the town, with the first publication of the notice to be made not less than twenty-one (21) days before the date fixed in the notice of the election and the last publication to be made not more than seven (7) days before the election. At the election, all qualified electors of the proposed special local improvement assessment district may vote, which qualified electors shall be determined by use of the voter rolls of all municipal voting precincts containing any property in the proposed special local improvement assessment district.

The ballots prepared by the municipality and used in the election shall have printed thereon the additional millage to be assessed, a brief statement of the purposes of the proposed special local improvement assessment district and the words "FOR THE SPECIAL IMPROVEMENT ASSESSMENT DISTRICT" and, on a separate line, "AGAINST THE SPECIAL IMPROVEMENT

ASSESSMENT DISTRICT," and the voters shall vote by placing a cross (X) or check (√) opposite their choice on the proposition.

(4) When the results of the election shall have been canvassed and certified by the municipality, the governing authorities of the municipality shall adopt a resolution creating the special local improvement assessment district if at least sixty percent (60%) of the qualified electors in the proposed special local improvement assessment district who vote in the election vote in favor of creating the district. The resolution shall contain a description of the boundaries of the district and shall specify the millage rate to be levied upon taxable real property in the district for the municipality's fiscal year. At least thirty (30) days before the effective date of the tax, the governing authorities shall furnish to the Department of Revenue a certified copy of the resolution evidencing the tax.

(5) The procedures required in this section for the establishment of a district shall be used for the modification of the boundaries of a district.

HISTORY: Laws, 2019, ch. 437, § 2, eff from and after July 1, 2019.

§ 21-33-555. Powers of homeowners' associations representing property in special local improvement assessment districts; dissolution of districts.

(1) Upon the adoption of a resolution establishing a special local improvement assessment district as set forth under Section 21-33-553, the homeowners' association representing the property area in the district shall be authorized to exercise the following powers within the special local improvement assessment district:

(a) To provide for the planning and design of local improvements and the coordination of landscape design on different parcels of property, including the preparation of working drawings for the construction, acquisition and installation of local improvements;

(b) To purchase, acquire, install and construct local improvements;

(c) To purchase and acquire easements, air rights, scenic rights-of-way and other interests in land on which local improvements can be placed and which are necessary or desirable in connection with any local improvements;

(d) To provide for the management of local improvements, including, but not limited to, providing maintenance and services within the district; and

(e) To contract with a nonprofit local association duly incorporated under the laws of the State of Mississippi to undertake all or a portion of the activities within the district.

(2) A special local improvement assessment district established under Section 21-33-553 shall be dissolved upon completion of all improvements in the district's strategic plan and satisfaction of all indebtedness incurred in connection with the district's activities. However, the district may be continued in effect by following the petition and ballot procedures provided for the establishment of the district in Section 21-33-553.

HISTORY: Laws, 2019, ch. 437, § 3, eff from and after July 1, 2019.

§ 21-33-557. Use of proceeds of special assessments levied on real property located in districts.

(1) The proceeds of any special assessment levied on real property located within a special local improvement assessment district under Section 21-33-553 may be used to pay costs including administrative costs of and relating to exercising the powers set forth in Section 21-33-555. The municipality shall hold the proceeds of the special assessment until disbursing the proceeds to the homeowners' association representing the area in a district created under Section 21-33-553. A homeowners' association shall keep the proceeds of such assessment separate and apart from other funds of the association. Accounting for receipts and expenditures of proceeds from the assessment shall be made separately and apart from the accounting of receipts and expenditures of the homeowners' association for other funds of the district. The homeowners' association shall have its books and records audited annually by an independent certified public accountant and shall file a written report of the audit with the clerk of the municipality. The clerk of the municipality shall make the report of the audit available for public review. A special local improvement assessment district shall operate on the same fiscal year as the municipality.

(2) Any homeowners' association whose area of coverage is an operating special assessment local improvement assessment district shall post online notice of its annual meeting. At each annual meeting, the homeowners' association shall provide an update regarding the status and use of the monies collected under the special assessment imposed pursuant to Sections 21-33-551 through 21-33-561 and shall hold elections for officers and board members. Upon dissolution of the special local improvement assessment district under Section 21-33-555(2), the term of service of the homeowners' association officers and board members shall resume the length specified in the bylaws of the homeowners' association.

(3) Nothing in this section shall prevent the use of such special assessment for the purpose of planning and design of local improvements for any property located within a district and the coordination of landscape design on different parcels of property.

HISTORY: Laws, 2019, ch. 437, § 4, eff from and after July 1, 2019.

§ 21-33-559. Acceptance and expenditure of contributions from other sources.

Any homeowners' association representing the area in a district established under Section 21-33-553 may accept and expend contributions from any other sources and apply such contributions to any of the purposes set forth in Sections 21-33-551 through 21-33-561.

HISTORY: Laws, 2019, ch. 437, § 5, eff from and after July 1, 2019.

§ 21-33-561. Assessment of taxable property falling under more than one homeowners' association.

In the event any parcel of taxable property falls under the purview of more than one homeowners' association, each of whose property owners petition to create a special local improvement assessment district under Section 21-33-553, such parcel may not be assessed pursuant to Sections 21-33-551 through 21-33-561 more than once at any given time. The parcel shall be assessed by the special local improvement assessment district first approved by the electors pursuant to Section 21-33-553. Following the dissolution of the taxing special local improvement assessment district under Section 21-33-555(2), the next special local improvement assessment district to have been approved by the electors pursuant to Section 21-33-553 shall become the taxing district.

HISTORY: Laws, 2019, ch. 437, § 6, eff from and after July 1, 2019.

CHAPTER 35.

MUNICIPAL BUDGET

Sec.
21-35-17. Budget estimates not to be exceeded; liability therefor; exemption for unfunded employee retirement or pension funds.

§ 21-35-17. Budget estimates not to be exceeded; liability therefor; exemption for unfunded employee retirement or pension funds.

Expenditures made, liabilities incurred, or warrants issued in excess of any of the budget detailed appropriations as originally and finally determined, or as thereafter revised by transfer as provided by this chapter, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The governing authorities shall not approve any claim and the city clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions of this chapter, except upon an order of a court of competent jurisdiction or for an emergency, as provided in this chapter. Any one or more of the governing authorities, or clerk, approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall forfeit to the municipality twice the amount of such claim or warrant, which shall be recovered in an action against such member, or members, of the governing authorities, or clerk, or all of them, and the several sureties on their official bonds, and it shall be the duty of the governing authorities of such municipality, or the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, or any taxpayer of such municipality, to bring an action therefor through the city attorney, or any

attorney designated and empowered so to do by a court of competent jurisdiction. Provided, however, that the term "budgeted expenditures" for purposes of personal liability of members of the local governing authorities under this section shall not include any unfunded liability for municipal employee retirement or pension funds. Nothing in this section shall diminish any responsibility of the members of the local governing authorities to fund any employee retirement or pension plans, or any liability as a result of any failure to fund such plans as otherwise required by law.

HISTORY: Codes, 1942, § 9121-08; Laws, 1950, ch. 497, § 8, eff from and after August 31, 1950; Laws, 2018, ch. 434, § 2, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment added the last two sentences.

§ 21-35-31. Annual audits or reports required; noncompliance; authority to withhold from allocations and payments payable to municipality certain amount to pay cost of audit or report.

HISTORY: Codes, 1942, § 9121-17; Laws, 1950, ch. 497, § 17; Laws, 1970, ch. 502, § 1; Laws, 1970, ch. 540, § 1; Laws, 1981, ch. 378, § 1; Laws, 1985, ch. 519, § 6; Laws, 1988, ch. 457, § 8; Laws, 1990, ch. 526, § 1; Laws, 2009, ch. 435, § 1; brought forward without change, Laws, 2016, ch. 361, § 2, eff from and after July 1, 2016.

Editor's Notes — This section was brought forward without change by Laws of 2016, ch. 361, § 2, effective from and after July 1, 2016. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Amendment Notes — The 2016 amendment brought the section forward without change.

CHAPTER 37.

STREETS, PARKS AND OTHER PUBLIC PROPERTY

Sec.

21-37-21. Public cemeteries; cemetery board of trustees authorized in certain municipalities.
21-37-57. Pascagoula Public Beach renamed "Buffett Beach.".

§ 21-37-7. Closing streets.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general

Planning commission's approval of a requested right-of-way vacation and realignment of a street was based on more than a mere scintilla of evidence and was neither arbitrary nor capricious because as the governing authority of the city, the city council had the power to vacate any portion of the public street; the layout of the street and the proposed realignment

would not result in any change to the street. Alpert v. City of Biloxi, 228 So. 3d 965, 2017 Miss. App. LEXIS 604 (Miss. Ct. App. 2017).

Circuit court did not err in upholding a city's decision to adopt its planning commission's approval of a requested right-of-way vacation and realignment of a street because the approval was based on more than a mere scintilla of evidence and was neither arbitrary nor capricious; both the planning commission and the city council considered substantial facts surrounding the property owner's application, and the city's decision to approve the application was reached after much consideration. Alpert v. City of Biloxi, 228 So. 3d 965, 2017 Miss. App. LEXIS 604 (Miss. Ct. App. 2017).

§ 21-37-21. Public cemeteries; cemetery board of trustees authorized in certain municipalities.

The governing authorities of municipalities shall have the power and authority to maintain, repair, and enlarge all of the public cemeteries owned or controlled by such municipalities, within or without the municipal limits, at the expense of the treasury of such municipality.

The governing authorities of a municipality, in its discretion, may maintain and repair any abandoned public or private nonprofit cemetery located within the corporate boundaries of the municipality. The expense of the maintenance of an abandoned public or private nonprofit cemetery may be paid from any available municipal funds. For the purposes of this section, the term "public or private nonprofit cemetery" includes an abandoned community, religious or fraternal cemetery; however, the term does not include family burial grounds or a for-profit perpetual care cemetery that is subject to Sections 41-43-31 through 41-43-57. "Abandoned cemetery" means a cemetery which shows signs of neglect, including, without limitation, the unchecked growth of vegetation, repeated and unchecked acts of vandalism, or the disintegration of grave markers or boundaries and for which no person can be found who is legally responsible and financially capable of the upkeep of such cemetery.

Should there be situated wholly within the corporate limits of any municipality a cemetery which, because of age, abandonment of graves by private owners, or for other good cause, is not being properly maintained, and thereby becomes detrimental to the public health and welfare, and should the governing authorities of that municipality determine that it is to the best interest of the municipality that the municipality assume the maintenance of such cemetery, then such governing authorities shall have the power and they are hereby authorized to acquire title to such cemetery by gift, purchase, eminent domain, or otherwise and are authorized to thereafter maintain, repair, enlarge, fence or otherwise improve such cemetery.

The governing authorities of any municipality having a population in excess of seven thousand five hundred (7,500) according to the latest available federal census and being located in a county having an area in excess of eight hundred twenty-five (825) square miles which is traversed by a link of the National System of Interstate and Defense Highways, may, in its discretion, appoint a cemetery board of trustees of not less than five (5) nor more than

seven (7) members to serve for staggered terms of office with full power and authority to administer and operate its cemetery, including but not limited to authority for the establishment of a fund, from a portion of the proceeds from the sale of cemetery lots, to be held in trust and invested by the trustees to the end of insuring perpetual care and maintenance of the cemetery with the least possible tax levies. The municipal governing authorities and the trustees are authorized and empowered to promulgate and adopt reasonable rules and regulations, not inconsistent with law, deemed essential in carrying out the provisions of this section.

HISTORY: Codes, 1942, § 3374-165; Laws, 1944, ch. 212; Laws, 1950, ch. 491, § 165; Laws, 1956, ch. 402; Laws, 1962, ch. 544, eff from and after passage (approved May 10, 1962); Laws, 2019, ch. 359, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the second paragraph; and made minor stylistic changes in the third and fourth paragraphs.

§ 21-37-57. Pascagoula Public Beach renamed "Buffett Beach."

The Pascagoula Public Beach located in Pascagoula, Jackson County, Mississippi, and which serves as one of the many coastal tourists attractions in the State of Mississippi, shall be renamed "Buffett Beach" in honor and in recognition of Pascagoula native and musical icon, James William "Jimmy" Buffett, who lived blocks away and played on its shores. The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place adjacent to the beach's entrance, that states the background, accomplishments and contributions to the state by James William "Jimmy" Buffett. The Department of Finance and Administration in conjunction with the Mississippi Department of Public Safety shall erect or cause to be erected proper signage at the beach's easternmost, centermost and westernmost access entrances displaying the official name of the beach as "Buffett Beach."

HISTORY: Laws, 2016, ch. 442, § 2, eff from and after July 1, 2016.

CHAPTER 39.

CONTRACTS AND CLAIMS

§ 21-39-27. Municipalities authorized to obtain credit cards for official travel by members of governing authority and municipal employees.

JUDICIAL DECISIONS

3. Failure to provide receipts.

Mayor had to repay expenditures charged on a city's credit card because he failed to comply with a statute requiring receipts be given each month to a municipal clerk. Moreover, auditor was not required to show an "actual loss" beyond money being paid. Davis v. State ex rel.

Hood, 198 So. 3d 367, 2015 Miss. App. LEXIS 657 (Miss. Ct. App. 2015), cert. denied, 203 So. 3d 596, 2016 Miss. LEXIS 379 (Miss. 2016).

CHAPTER 45.

TAX INCREMENT FINANCING

Sec.
21-45-9. Issuance of tax increment bonds; issuance of refunding bonds; agreements with developers.

§ 21-45-9. Issuance of tax increment bonds; issuance of refunding bonds; agreements with developers.

Any governing body may issue tax increment bonds, the final maturity of which shall not extend beyond thirty (30) years, for the purpose of financing all or a portion of the cost of a redevelopment project within the boundaries of the municipality, funding any reserve which the governing body may deem advisable in connection with the retirement of the proposed indebtedness and funding any other incidental expenses involved in incurring such indebtedness. The debt service of indebtedness incurred pursuant to this section shall be provided from the added increments of municipal and county ad valorem tax revenues or any portion of the sales taxes, or both, to result from any such redevelopment project, or sales tax revenue allocated for distribution to a county under Section 27-65-75(1)(d), and shall never constitute an indebtedness of the municipality within the meaning of any state constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers.

Said bonds may be authorized by resolution or resolutions of the governing body, and may be issued in one or more series, may bear such date or dates, mature at such time or times, bear interest at such rate or rates, payable at such times, be in such denominations, be in such form, be registered, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, with or without premium, carry such conversion or registration privileges and be declared or become due before the maturity date thereof, as such resolution or resolutions may provide; however, such bonds shall not bear a greater interest rate to maturity than that allowed under Section 75-17-101. Said bonds shall be sold for not less than par value plus accrued interest at public sale in the manner provided by Section 31-19-25 or at private sale, in the discretion of the governing body. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. Said bonds may be repurchased by the municipality out of any available funds at a price not to exceed the principal amount thereof and accrued interest, and all bonds so repurchased shall be cancelled. In connection with the issuance of said bonds, the municipality shall have the power to enter into

contracts for rating of the bonds by national rating agencies; obtaining bond insurance or guarantees for such bonds and complying with the terms and conditions of such insurance or guarantees; make provision for payment in advance of maturity at the option of the owner or holder of the bonds; covenant for the security and better marketability of the bonds, including, without limitation, the establishment of a debt service reserve fund and sinking funds to secure or pay such bonds; and make any other provisions deemed desirable by the municipality in connection with the issuance of said bonds.

If a governing body desires to issue tax increment financing bonds under the Regional Economic Development Act, the governing body also shall comply with any requirements provided therein.

In connection with the issuance of said bonds, the municipality may arrange for lines of credit with any bank, firm or person for the purpose of providing an additional source of repayment for such bonds and amounts drawn on such lines of credit may be evidenced by bonds, notes or other evidences of indebtedness containing such terms and conditions as the municipality may determine; provided, however, that such bonds, notes or evidences of indebtedness shall be secured by and payable from the same sources as are pledged to the payment of said bonds which are additionally secured by such line of credit, and that said bonds, notes or other evidences of indebtedness shall be deemed to be bonds for all purposes of this chapter. Pending the preparation or execution of definitive bonds, interim receipts or certificates, or temporary bonds may be delivered to the purchaser or purchasers of said bonds. Any provision of law to the contrary notwithstanding, any bonds, if any, issued pursuant to this chapter shall possess all of the qualities of negotiable instruments.

The municipality may also issue refunding bonds for the purpose of paying any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the municipality may determine. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issuing the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by any of the municipality's resolutions, trust indenture or other security instruments. The issuance of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders and the rights, duties and obligations of the municipality in respect of the same shall be governed by the provisions of this chapter relating to the issuance of bonds other than refunding bonds, insofar as the same may be applicable.

Before incurring any debt pertaining to a redevelopment project incorporating a tax increment financing plan the governing body may, but shall not be required to, secure an agreement from one or more developers obligating such developer or developers:

(a) To effect the completion of all or any portion of the buildings or other facilities or improvements, as described in the redevelopment project, at no cost to the municipality;

(b) To pay all or any portion of the real property taxes due on the project in a timely manner; and

(c) To maintain and operate all or any portion of the buildings or other facilities or improvements of the project in such a manner as to preserve property values.

No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon its general credit or against its taxing powers.

Additionally, the municipality may enter into an agreement with the developer under which the developer may construct all or any part of the redevelopment project with private funds in advance of issuance of the bonds and may be reimbursed by the municipality for actual costs incurred by the developer upon issuance and delivery of the bonds and receipt of the proceeds, conditioned upon dedication of redevelopment project by the developer to the municipality to assure public use and access. This condition shall not apply to the privately owned portion of a project for which the Mississippi Development Authority has issued a certificate of convenience and necessity pursuant to the Regional Economic Development Act. In addition, this condition shall not apply to the privately owned portion of a redevelopment project where the governing body of a municipality makes a finding that it is in the best interest of such municipality that such condition shall not apply.

HISTORY: Laws, 1986, ch. 449, § 5; Laws, 1993, ch. 494, § 3; Laws, 1993, ch. 527, § 2; Laws, 2000, 2nd Ex Sess, ch. 1, § 22; Laws, 2006, ch. 538, § 18; Laws, 2007, ch. 422, § 1, eff from and after passage (approved Mar. 20, 2007.); Laws, 2019, ch. 391, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment inserted "or sales tax revenue allocated for distribution to a county under Section 27-65-75(1)(d)" in the second sentence of the first paragraph.